United States Court of Appeals

for the Second Circuit

APPENDIX

75-1118

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United States Court of Appeals

FOR THE SECOND CIRCUIT

Docket No. 75-1118

UNITED STATES OF AMERICA,
Appellee,

—v.—

FRANK COTRONI and FRANK DASTI,
Defendants-Appellants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

APPELLANTS' APPENDIX
Volume II—Pages A-811 to A-1622

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L O U I S P H I L L I P P E L A N D R Y , called as a witness, having been first duly sworn, took the stand and testified as follows:

THE COURT: I think we will take a short recess at this point.

(A brief recess was declared.)

(At 12:00 noon the hearing resumed.)

DIRECT EXAMINATION

BY MR. PUCCIO:

MR. PUCCIO: May I proceed, your Honor?

THE COURT: Yes.

Q Mr. Landry, where do you reside?

A I reside in Montreal.

Q What is your present occupation?

A I am the Regional Director of the Federal Department of Justice office in Montreal.

I think for you to understand, this would be the equivalent of the position of United States Attorney here.

Q Now, Mr. Landry, will you tell us a little bit of your education and background?

A Well --

THE COURT: May I know first who is your superior?

THE WITNESS: My superior is, on some matters,

on some matters, directly a Deputy Attorney General of Canada and on other matters the Associate Deputy Minister.

I answer directly to the Deputy Minister of the Department of Justice and the Associate Deputy Minister.

THE COURT: Areyou appointed?

THE WITNESS: I am a civil servant on the staff of the Federal Department of Justice.

I believe from my knowledge of the American system that in that sense my position is the same as a member of the Justice Department in Washington, and to compare my functions, they would compare very much with those of a United States Attorney.

THE COURT: Do you represent the Government?

THE WITNESS: In my office, I have presently twenty-two lawyers and six students. There is a criminal section which is headed and still is headed until the middle of January by an attorney, Mr. Jean Paul.

I have a civil section headed by an attorney and I have a tax section.

These are on the civil side.

THE COURT: I think your analogy to the United States Attorney was quite precise.

You may proceed.

Q Now, will you tell us a little bit about your educational background?

A I am a member of the Quebec Bar since August of 1959 and I have been on the staff of the Department of Justice in Ottowa in the Antitrust Division and here I am using the American terms, for two years, from 1959 to 1969.

Afterwards I was on the staff of the criminal section of the Department of Justice in Ottowa.

In 1963 I joined the staff of the Crown Attorney's Office in Montreal, and that would be a provisional appointment. I was there for a year and a half and in July of 1965, I came back within the federal government, the Department Of Justice; but at that time in Montreal, and I started what is now known as the Regional Office of the Department of Justice.

MR. ROSENTHAL: I am willing to concede that Mr. Landry is competent to testify.

Any lawyer is capable of giving expert testimony in the law. The law allows us to be experts, and whether we are or not is a different story.

THE COURT: Please proceed.

Q Have you lectured in any university in Canada in criminal law?

A At the moment I am lecturing -- well, I might

say there are the following universities that give civil law teaching, that is, what is strictly applicable to the Province of Quebec, Lavalle University in Quebec, McGill in Montreal, Cherbrook University in Ottawa and at the moment I am teaching criminal procedure in Ottawa University and also another course, an optional course in criminal law.

I have been lecturing in Montreal University some years in the more extensive fashion, and some of the years as a mere lecturer for a few hours.

I have been lecturing in the University of Cherbrook, and I have lectured at Lavalle University.

I have lectured occasionally at McGill University and I am a teacher at the Bar School in Montreal, as well.

Q During the course of your career in the bar, or at the bar, in Canada, have you had occasion to become familiar with the law as it exists and as it pertains to wire-tap?

A Yes.

Q And the jurisprudence on wiretap?

A Yes.

Q Are you familiar with the privacy act which went into effect in June of '74 in Canada?

A Yes.

Q Were you ever consulted in connectionwith the

privacy act?

A Well, when these bills are created by some of our learned friends in the department, we may get the views of those who have particular experience in, if it is criminal law, amendments from those who have knowledge of criminal law and I had occasion to discuss the matter at the time on the matter that you asked me.

Q And are you familiar with the legality or illegality of wiretapping prior to the passage of the protection privacy act?

A Well, I had occasion to study this question throughout the years and in particular we had in my office, to review the specific question at the occasion of a case where one, Guido Orsini was involved in Montreal in a heroin case, a narcotic case, and where electronic devices had been used to tap the conversations that took place in a motel room.

On that occasion we reviewed the jurisprudence. It was not specifically wiretap on the telephone line, but it was if one might say an intrusion in the motel room through an electronic device placed into a wall of the motel room.

We had to study the question at that time of interception of private communication.

On that occasion I had decided that evidence was material enough for our getting into this question and attempting

to file it in court and it was filed in court at that time.

Q So you have had occasion during the course of your own work to study the question of the legality of the electronics surveillance?

A Yes, and that was before the enactment.

This is an occurrence before the enactment of what is called in Canada the Protection of Privacy Act, which is in fact, that was the title of the act, which was really an amendment to the Criminal Code of Canada.

I may state that before the end of June 30th of 1974, there was no law in Canada regulating the interception by electronic devices of private communication.

On June 30, 1974, I believe that the Court has been supplied with a resume of my opinion.

As of that date there was the adoption of that act which, from now on, is regulating the interception of private communication in general and that, of course, includes wiretapping.

Q Based upon your experience at the bar in Canada and in the cases you have been personally involved with, do you have an opinion concerning the legality and admissibility of wiretapping and wiretapping evidence prior to the passage of the protection of privacy act, and if you do, would you state the opinion for the Court and give us the basis for your opinion?

A I believe that there are two questions that arises in Canada with respect to wiretapping, prior to the enactment of this law at the end of June of 1974.

The question that arises at this moment is first of all, was wiretapping legal or illegal; secondly, is wiretap evidence obtained prior to the enactment of the law in June admissible in court in Canada.

As the Court will know, the second questioncan be, in Canada, answered rather easily, in that whether or not evidence is obtained through an unlawful act, that evidence would nonetheless be admissible as the law of Canada, the laws of evidence go more to the truth of the matter instead of looking after the form in which the evidence was obtained; and I understand that the principles of the American law may be different on that score.

There are two matters on which, where evidence is not admissible unless it is obtained in a proper fashion and that is a statement obtained from a person who is accused, stands accused of a crime, and that statement must have been obtained freely and voluntarily. If it is not proven to be so, the statement will be declared inadmissible; but even there, if an object is found as a result of a statement obtained unlawfully, the Crown will not be prevented from introducing into evidence that object.

So we don't --

THE COURT: The fruit of the tree is poison doctrine?

THE WITNESS: We do not.

We unfortunately have that doctrine in Canada yet. The only other exception I can think of at this time is now in the law that was adopted in June of 1974, and the law would state that unless an interception is obtained lawfully it is not admissible in evidence and then there the Court is given some latitude, and if that is necessary I can point out and discuss that later on, but I don't tnink for the purposes right now it would be necessary and relevant.

(continued next page)

THE COURT: Yes.

THE WITNESS: So that in Canada, the question of admissibility does not arise in the same fashion as it does in the United States.

On that score I have no hesitancy whatsoever in saying that my opinion is that wiretapping evidence in Canada obtained prior to June 30, 1974 would be admissible and it is admissible before Canadian courts, subject, of course, to a proper voir dire as to how it was taken and the same rules of evidence would apply.

Q Mr. Landry, it was admissible prior to the passage of the new act and after the --

A Definitely.

Q It would be admissible prior to the passage of the new act and after the passage of the new act; is that correct?

A What I am saying is that evidence obtained in Canada through wiretap interception of private communication does otherwise than wiretap, through electronic devices, that evidence was admissible before Canadian courts before the passing of the law enacted on the 30th of June, 1974, and that the same evidence, notwithstanding the law that was adopted, the same evidence which was obtained prior to the enactment of that law, is still admissible and our courts have decided

accordingly.

I have supplied the court with two unreported judgments on the question. There may be others since, but I have not heard about them. That is the case of Her Majesty the Queen against Barton Roy LeSarge, a judgment of his Honor, Judge Martin of the Court of General Sessions of the District of York in Ontario, rendered on the 23rd of December, 1974.

MR. PUCCIO: Your Honor, that is in our discovery material as of November 8, 1974.

THE COURT: I just instructed my Clerk to start indexing this --

MR. PUCCIO: It would be 42, the last exhibit. It would be Mr. Landry's opinion letter to us and the supporting case.

THE COURT: Her Majesty the Queen against --

THE WITNESS: Barton Roy LeSarge.

So there is that case and there is the other case of Andre Desjardins and Sureau. This is a judgment of the Honorable Mr. Justice Claude Bisson of the Queens Bench Court in Montreal on the same subject. Both judges arrived at the same conclusion.

In each of these cases it involved the question of admissibility of wiretap evidence obtained prior to June 30, 1974 and the courts have decided that that

evidence was admissible, notwithstanding the law enacted at the end of June.

THE COURT: You say that wiretap evidence in Canada is admissible whether or not it was lawfully obtained?

THE WITNESS: Well, at the moment, my Lord, I am saying this, that the question that arose in those cases, is the following: Since the Parliament of Canada adopted a law at the end of June, 1974 declaring that no wiretapping evidence may be adduced in evidence unless it has been obtained lawfully -- "lawfully," I would interpret as meaning obtained in accordance with the provisions of that Act; therefore, should we have evidence of -- wiretapping evidence obtained prior to this bill, that one wants to adduce after the proclamation of this bill, then because of that bill the wiretap evidence would not be admissible in Canada and the courts have said no.

THE COURT: I understand the thrust of those opinions. But you also expressed an opinion prior to June 30, 1974 wiretap evidence, whether or not lawfully obtained, was admissible.

THE WITNESS: It would be admissible even if it was unlawfully obtained following the principles that we

are going at the truth of the events rather than the form in which this would have been obtained, and this I believe would be a clear distinction between the American situation and the Canadian situation.

So on that question I would rely on the reasons advanced in those two judgments as -- an attorney could come before you and say that this is his opinion. I say that this was my opinion, has always been my opinion, and that for the moment I am supported by these two judges who are courts of original jurisdiction, they are not courts of appeal in these matters, but this is all there is at the moment in Canada today.

But there has been -- there have been cases in Canada where wiretapping evidence was admitted prior to June of 1974. I have heard, but too late to get a specific quotation of a case, of a drug case in Vancouver where the interception was made by the Vancouver police, I am informed, but I have not verified that more fully, and there was this case of Guido Orsini, I have mentioned, where there was actual interception but not on the telephone line, where the evidence was accepted and on that score I would put the two situations on the same footing.

In that case it was a plug passed through a wall

of a motel.

THE COURT: Of a wall?

THE WITNESS: The police in that case rented a motel room to use in the normal fashion and they pierced the wall with a plug or a device of some kind that was actually going right through the wall, and there was coming out in the other room to pick up the sounds that would be made in that room. They made a recording of what transpired.

THE COURT: The legality of that intrusion was not passed upon, just the admissibility of the evidence?

THE WITNESS: Well, that evidence was held to be admissible.

THE COURT: But they never reached the question as to whether it was unlawfully seized or not.

THE WITNESS: In that case I don't think the matter was -- did really arise and I don't think it was a question that would have made any difference at that time.

THE COURT: As I recall it, we had two Supreme Court cases many, many years ago -- I think one was United States against Silverman, I forget the name of the other -- one that permitted the evidence that was obtained through placing an electronic device on the wall

that separated two hotel rooms and the other that found that the intrusion of the spike was an unlawful intrusion and excluded it. So we drew a fine line.

THE WITNESS: Now, there is the second question, if I may go into it now, the question as to whether or not wiretapping would be considered in Canada, or was considered in Canada lawful prior to the enactment of this law.

At the moment it is now quite clear that unless an interception, be it wiretapping or another type of interception, is made without the authority or against the provisions of the Criminal Code, that in itself is a criminal offense and one could do wiretapping only in circumstances described in the Criminal Code. Any interception outside of those provisions is unlawful.

Now, some may say that wiretapping was unlawful before this enactment because there was no provision allowing it, and some may say -- and this is my opinion -- that because there is no specific provision authorizing something to be done it does not mean that it is unlawful. I would feel that, in my opinion, that it is quite the contrary. If we go at the basis of criminal offenses, if a certain behavior is not made a criminal offense, then that behavior is certainly not

unlawful.

THE COURT: Is a trespass a criminal offense?

THE WITNESS: Trespassing would be the equivalent of a misdemeanor in your country. I would like to check --

THE COURT: It would be a criminal offense then?

THE WITNESS: But I would like to refresh myself on that point in particular. I would like to keep that for after the recess. I will comment on that.

THE COURT: That was true in English common law, wasn't it, trespass was a criminal offense?

THE WITNESS: It would be a summary conviction offense, I believe, but I would like to make doubly sure.

When we talk of summary conviction offense in Canada we speak of the equivalent of a misdemeanor.

In Canada we have two types of offenses: indictable offenses and offenses punishable on summary conviction.

These are the two distinctions: These are offenses created by the federal authority. The Provinces may create offenses but they are not called criminal offenses in the strict sense of the word because of the constitutional aspects involved. Only the federal authority can create offenses that are called criminal.

The Provinces may create offenses in a very general sense to enforce legislation which a province may enact.

THE COURT: They are a hybrid, they are torts committed against society but not really a crime.

THE WITNESS: Now, with respect to the legality of wiretapping prior to this enactment, my opinion is that wiretapping was lawful, could be lawfully made in Canada and this is -- I had the advantage of reading the opinion of Mr. Maranda. I don't think there is any disagreement that there was no law prohibiting wiretapping. But it was subjected to certain Provincial and -- well, I would say Provincial legislation, that is, the telephone lines of the various provinces -- Ontario is one -- and it is referred to in the judgment of Chapman -- not Chapman -- Adamson and Copeland. It is also referred to in the case of Chapman. The Provincial legislation prohibits the listening -- I could quote -- prohibits the acquisition -- it says that any person who listens to -- listening or acquiring knowledge of any conversation or message passing over the lines not addressed to or intended to that person, and divulges the same -- so that the offense here is one of not only eavesdropping, but one would need to also divulge to

commit the offense. Eavesdropping by itself would not be a criminal offense in any way.

I wanted to point that out in some of the judgments that I have referred to where it was specifically stated. So that the offense would be to divulge, acquire knowledge and divulge, and I believe some important words in that section are "except when lawfully authorized or directed to do so." And one should not lose sight of those words which may qualify very substantially the work that is done by a police officer in his carrying on his duties to prevent the commission of crimes and to investigate crimes.

The Bell Telephone Act has also a section which has been interpreted where the word "intercept" is used. That word in the context of the Bell Telephone Act has been interpreted as meaning that you would need to actually intercept the message completely.

There have been some cases in Canada when some people wanted to exchange a certified check at a bank, they would actually intercept an outgoing call going from a bank to another bank that allegedly had made the certified check, where the banker wanted to check with the other banker to make sure that that was really so. People, through the use of an interception, would

actually prevent the call from reaching the bank and they would intercept the call and answer as if they were the banker and certify that the check was quite all right. That was an actual interception.

Now, in the Criminal Code, to support that, in the Criminal Code there is now a definition of the word "intercept," and that definition now includes the word "intercept" is now defined as -- it says "intercept includes listen to, record or acquire a communication or acquire the substance, meaning or purport thereof."

So that the word "intercept" here, the legislature has defined it to include the mere listening. There is now, of course, with the use of the word "intercept" in the Criminal Code, there would be a clear distinction because of that definition with the word as it stands in the Bell Telephone ACt.

My authority for that is, of course, the judgment that I have mentioned of Copeland and Adamson where the word "intercept" in the Bell Telephone Act has been limited to an actual interception.

BY MR. PUCCIO:

Q Go ahead, please.

A The other foundation that one could use for a lawful wiretapping before that bill is the following: A police

officer, by his very duties, is charged with the maintaining of the law, the prevention of crime, the investigation of crime.

The legislature has not up to this time regulated all that a police officer may or may not do. For instance, a police officer may go out and interview a witness. Now, if we were in France and there was a crime that had been committed, that police officer could operate only under the jurisdiction of aJudge d'Instruction. He cannot operate otherwises than by permission given by thatJudge d'Instruction.

In Canada, the police officer is not restricted in the carrying on of his investigation by the Judge d'Instruction.

We can think of many activities that are carried on by police officers that are not regulated. We had not so long ago in Canada very broad powers of arrest given to police officers. As a result of possible abuse of those powers those powers were then further regulated. This I believe happens very frequently.

Now, my opinion is that on wiretapping, as long as it was not prohibited by a statute for purposes of law-enforcement, and I am of the opinion that Section 24 of the Telegraph and Telephone Companies Act of the Province of Quebec does not prevent a police officer from wiretapping for the purposes of a criminal investigation. I would submit that

the words "when lawfully authorized or directed to do so" would cover that situation.

Where we have a person who has a legal duty under the law to investigate crimes, that person uses certain means to investigate, and here I have in mind wiretapping. He is not prevented from wiretapping until such time as the Legislature will wish to regulate wiretapping.

THE COURT: You have the equivalent of our constitutional right against unreasonable searches and seizures, do you?

THE WITNESS: We have a Bill of Rights that is declaratory in a way, where we have various sections giving the basic right of persons in Canada. But that Bill of Rights, as such, is up to a point declaratory and in order to determine the rights of a person one would have -- on the question of search and arrest, one would have to go on the Criminal Code and what the Criminal Code says.

Now, if that code was made applicable, for instance, to -- if one was given a larger power to arrest Indians, for example, then that law may be found to be unconstitutional as against the Bill of Rights because Canadian citizens are entitled to equal rights. But as long as those rights are insured equally for everybody

then that law --

THE COURT: Do you have a right against unreasonable search and seizure?

THE WITNESS: That would be found in the criminal code which says that a police officer may enter and search with a warrant. That is regulated as to how it is to be done and under what authority. The right to search is regulated in the Criminal Code. The right to arrest, the power to arrest, is regulated in the Criminal Code.

THE COURT: I have one more question: You are the Regional Director and have been since when?

THE WITNESS: 1965.

THE COURT: During those years did you have occasion to offer in evidence or have your assistants offer irto evidence wiretap evidence?

THE WITNESS: If I have testified?

THE COURT: No, offered at any trial.

THE WITNESS: We did in the case of Guido Orsini, not wiretap, I'm sorry.

THE COURT: I'm talking about wiretapping.

THE WITNESS: No.

THE COURT: Never in the years that you were the Regional Director, from 1965 to May 30, 1974, or after, according to the permissibility as you have expressed

it, have you actually offered wiretap evidence in a criminal case.

THE WITNESS: I have never offered wiretap evidence in a criminal case.

THE COURT: Have any of your assistants who work under you?

THE WITNESS: Neither have my assistants.

I would say in the majority of the drug cases that we have had, they were cases involving people seized with drugs, the driver of a car, but we have never gone into wiretap evidence as such.

THE COURT: Wasn't wiretapping in general use in criminal investigations?

THE WITNESS: Well, I am not necessarily familiar with all the aspects of wiretapping.

For instance, I would not have been personally aware of the Vegas projects, although some of the evidence, I understand, could have been used -- for various reasons this evidence was not adduced, and I believe that -- I might explain this, that a police officer who carries on -- well, there was one case where we could have used some wiretap evidence that I remember, and we decided not to use it because for the purposes of that case, although it might have been

useful, we did not absolutely need that evidence, in our view, and, second, disclosing at that time the fact that that evidence was available would have advised -- would have caused more damage to other investigations that were in the course of being made, would have disclosed the location of the tap and would have caused considerable problems and endangered other investigations that were in progress.

Unless you have a case which is -- as may happen and will happen more frequently now where a wiretap is obtained for a very specific purpose, a specific one crime is supected, and once that crime is realized, the operation is closed. Then there is no, of course, problem in divulging the fact that you have intercepted. But in many other situations police might have wiretap evidence, there will not be any question of using it because it will endanger other investigations that are in progress.

I remember one case where this occurred in fact and we did not go into it for that very reason. But otherwise we have never used wiretap evidence in our cases, and in fact, in all -- with that exception that I have mentioned, it was never brought to me that we had wiretap evidence available.

BY MR. PUCCIO:

Q Mr. Landry, you have had the opportunity to read, have you not, the letter from Mr. Leo Rene Maranda to defense counsel in this case, which is a summary of his views on wiretapping; you have read that letter, have you not?

A Yes, I have.

Q And I direct your attention to a case called Chapman against Grange, which I believe was decided in an appellate court in Ontario.

Would you tell us, please, Mr. Landry, your opinion concerning the relevance of that case to this particular case here of the Vegas project which you have heard testimony concerning?

A Yes. If I may, just to conclude what I was saying, and I will go immediately into that, the further reasons for my saying that wiretapping was lawful in Canada prior to the bill of June, 1974, you will find, my Lord, in the case of Copeland and Adamson where I make all the remarks that are made in this judgment for the purpose of my -- of this evidence, and I could expound at more length on them, but I don't believe that I could state them as well as they are expressed in that judgment.

In the case of Chapman and Grange, that is a case where two police officers are moonlighting. There is a firm,

they operate under a firm named Cannington, Poole -- the name is in the case anyway, and it is a moonlighting operation by police officers. So the fact that here we are dealing with police officers does not equate the case with the facts of the case that is before you.

So these police officers offered their services to -- had offered their services to certain employers who wanted to have advance warning of what the unions they were dealing with were up to. These police officers installed a wiretap telephone lines which were being used by some union leaders or some people in the union, and what they intended to do -- the purpose of what they intended to do was to acquire knowledge of what was going on in these telephone lines and divulge it to the employers.

Now, there was no real justification for them to do that. They were not doing this to prevent the commission of crime, to find evidence about crime that had been committed, it was completely outside of their duties as peace officers.

The court held that their purpose was squarely within the ambit of Section 112 of the Telephone Act of Ontario, which is the equivalent of the Quebec Telephone Act, Section 25, which prohibits the acquisition of that knowledge and the divulgence of it.

The court held that that was an unlawful conspiracy

in that the police officers in question had agreed to acquire that knowledge and to divulge what they would obtain to employers.

There was absolutely no legal justification and that case is completely outside of the area of a peace officer attempting to apply criminal law or investigate criminal law.

(continued next page)

Q Now, youare aware, of course, Mr. Landry, that Mr. Maranda's opinion differs from yours.

A Well, I may say that in matters which are not too far from the present matter, Mr. Maranda and myself have very often had occasion to disagree.

Q Now, in the interest of saving time, are there any other points that Mr. Maranda raises other than the Chapman against Grange case which you would like to respond to very briefly now?

A Well, there is a remark at page 4 of Mr. Maranda's opinion. He indicates or he reasons in this fashion: He says if a -- and the following pages, he says if a judge in Canada could not prior to the end of June, 1974, authorize a police officer to search, how could the chief of police or another senior police officer authorize his juniors or himself to wire-tap?

I think I made a mistake in my statement. What Mr. Maranda says if a judge cannot issue a search warrant authorizing a police officer to wiretap as before June 30th, how can a police officer authorize himself to do the same thing?

Now, that is -- at first there appears to be some merit in that contention. But what we have to do is, we have to go back at the courts and what the courts are authorized to do. And in this case we have to go back into

the Canadian Criminal Code and look at what a Justice of the Peace could authorize in a search warrant.

Now, a Justice of the Peace in Canada is authorized to issue a search warrant. And here we are talking of the last -- that was applicable prior to June 30, 1974. And at Section 443 of the Criminal Code of Canada, we have the section which allows a justice to issue a search warrant. But the Justice can issue a search warrant only in respect of a thing. He cannot issue a search warrant to seize telephone conversations.

The law authorizes the Justice to issue a search warrant only with respect to something that may be physically seized. Therefore, I believe it is wrong to put it to Mr. -- the way Mr. Maranda puts it, that for a Justice to be in a position to issue such a warrant, he would have to have the authority under the Criminal Code. And under the Criminal Code the Justice of the Peace could not at that time issue a search warrant to that effect.

THE COURT: Excuse me. Do I have Mr. Maranda's statement?

MR. IANNUZZI: Yes, sir. A copy was mailed to you, sir. There were two folders, three folders. Two were transparent blue with a letter.

THE WITNESS: Now, to illustrate --

MR. IANNUZZI: Perhaps it's over there, sir. Those two are appendices and the letter is attached thereto. The two blue ones are the appendices, the two of them -- the three of them. Two are the letters and one is the appendix, sir.

THE COURT: All right.

THE WITNESS: As an illustration of this which may be possibly far-fetched, but one could say to follow Mr. Maranda's reasoning that a police officer could not in Canada and cannot in Canada authorize himself to go out and interrogate a witness because a Justice of the Peace cannot authorize him to do that. A Justice of the Peace cannot authorize a police officer to go out and question a witness because in the code he does not have that authority. Because that means that the police officer cannot go out and question the witness.

The same applies to a surveillance. If an agency wants to do surveillance, it cannot obtain a court authorization to do the surveillance. It does not mean that it is authorized to carry out the surveillance. That is as far as the power to issue search warrants.

Now, Mr. Maranda at page 6 -- would the Court wish me to wait until --

THE COURT: I have it.

THE WITNESS: All right. At page 6 he says -- on top of page 6, my humble opinion is that these acts by police officers could not be said to have been lawful as they were not done under the authority of the -- or in compliance or in accordance with any law.

Now, again, I think this is what I would qualify with all due respect for Mr. Maranda. Sophism -- what is the English word?

THE COURT: Sophistry?

THE WITNESS: Yes. That may be the translation.

Because when an act is not declared to be unlawful -- I am sorry.

When an act is not declared to be lawful specifically, it does not mean that it is unlawful. I think that would be going very far to say that anything that is not declared to be lawful in the lawbook is necessarily unlawful. Because the legislature has not regulated every type of conduct or behavior.

THE COURT: In this country all criminal law is statutory. It is what the Congress prohibits or the state legislature prohibits.

THE WITNESS: And the same applies to Canada.

Q Mr. Landry, are you saying --

A Yes.

Q Are you saying that Mr. Maranda's opinion is that anything that is not specifically declared lawful is illegal or unlawful?

MR. IANNUZZI: I object to that, if your Honor please, because that is calling for a conclusion of what Mr. Maranda's opinion is. I think this witness can't make a determination of that. He can only --

THE COURT: I will allow it. He is expressing an opinion.

MR. IANNUZZI: Yes.

THE COURT: In the light of Mr. Maranda's opinion. And I will allow Mr. Maranda to express an opinion in the light of what Mr. Landry is saying.

MR. IANNUZZI: Very well, sir.

THE WITNESS: Would you --

Q Yes. What I was saying was this -- let me rephrase the question.

Are you saying that your opinion of Mr. Maranda's statement is that he is saying that if there is not a law or an act in Canada specifically providing that something could be done, that particular act is illegal or unlawful?

A Well, that is what I interpret the sentence to mean. And if this is what it means, then that would be clearly wrong. And I say this with all due respect for

Mr. Maranda.

THE COURT: What you are saying is if that is the basis of his opinion that it's lawful only if it's permissible, then that is the quarrel you have with it.

THE WITNESS: Yes.

THE COURT: All right.

THE WITNESS: Now, there are the mention of possible offenses that I should comment on.

First of all, there is the question of mischief that is suggested. And in that section 387 of the Criminal Code of Canada -- and this I believe may arise out of the evidence of Mr. LaValle -- for instance, where he indicated that a wire with the instrument he was using would pierce the lining of the wire.

THE COURT: The insulation?

THE WITNESS: The insulation.

Now, there could be a suggestion that this would be mischief.

Now, what we have to bear in mind is that mischief is created in Section 387. In those words, everyone commits mischief who willfully destroys or damages property.

Now, does that mean that if -- that any act -- for instance, that if I scratch in a very tiny way this

desk, that under that -- while I am talking, I am committing a mischief.

THE COURT: That's inadvertence.

THE WITNESS: That would be inadvertence.

Now, if I scratch it in the slightest degree, would that be a mischief? It could possibly be a mischief. But if I am scratching it because I for one reason or another -- were I a police officer and I needed to get a sample of that paint, would that be mischief?

And that would be possibly the distinction.

Now, a mischief under Canadian law -- the word willful as the connotation of maliciously -- and I will only quote one case which is a case of original jurisdiction. It's Regina against Chapman. That is not the same Chapman reported at 1969 3 CCC -- that's Canadian Criminal Cases -- page 358. An analogy there is made of the meaning of the word willful. And the judge says, the use of the word willfully could not be an evil intention. And the extended definition of that word in Section 371 of the Criminal Code -- that is the former enumeration of the Section 386, I believe. It cannot be a deliberate intention to create loss or damage to property or to its use and enjoinment or a recklessness

as to whether or not loss or damage occurs.

In another part the Court quotes an often quoted Court of Appeals of England case, and that is Eley against Lytle. And the quotation is as follows. This is as long ago as 1885 in the case I have mentioned.

It was held by the Court of -- in England that an act of trespass causing damage so slight as to be inappreciable was not within the provision of the comparable legislation relating to malicious injury to property.

In order, therefore, under Canadian law to have a mischief, it must be done willfully and with some sort of malicious intent. And I would not feel that a police officer in the enforcement of the law, in the application or in the carrying on of his duties who -- who carries on a wiretap, and in order to achieve that wiretap causes, if we may call it a damage, a very slight damage, commits a mischief, he does not have that guilty mind which one would need to have to commit that offense.

And I could leave with Mr. Puccio a copy of that decision of Chapman and that could be given to the Court.

Now, in regard to mischief, there is also another section of the Criminal Code that could be mentioned.

And it is Section 25 of the Criminal Code, which is also mentioned in the judgment of Copeland and Adamson, of which your Lordship has a copy. It is at page 398 of the decision where the Court there using Section 25 of the Criminal Code indicates that that section affords some protection for one who is authorized to enforce the law.

When one is authorized to enforce the law in the carrying on of the application of the law, one may have at a certain time to resort to the use of force or to suggest breaking a door, for instance. Well, that would be -- if someone is breaking a door willfully, it is mischief. But he is excused under the law of using that force if he is acting unreasonable and probable grounds then he is justified to use whatever force is necessary to apply the law. And that Section 25 is used by the court in this judgment of Copeland and Adamson in that connection to say that a police officer may actually in the exercise of his duty resort to some -- the use of some force and that would not be an offense or would be an excuse.

(continued next page)

Q Mr. Landry, you have heard the testimony of Mr. Patenaude and --

A May I --

Q Yes.

A There was this other mention that I would like to make about Mr. Maranda's opinion. Mr. Maranda suggested that in all of the judgments that I have referred to, we would be dealing with dicta and not a decision on point. Now, in the case of Copeland and Adamson, the court there clearly in my view decided the question of the legality. The Court went over I think about ten pages of this question. And the Court raised the question in this way.

It says, "For the applicant it is submitted that the actions of such police officers under the direction of and with the approval of such police commission and Chief of Police Adamson in conducting such audio surveillance in the manner set out in such decision of the board is unlawful."

And then the Court proceeds to analyze that proposition and say, No, it is not unlawful.

And the Court says, further, I cannot as a court tell them what to do unless Parliament regulates wiretapping. And, well, one could say it is dicta because the court proceeds on and says, in any rate, the applicant has no status before the court to make such a motion.

Well, if one wants to take this as an arbiter, I would be prepared to go along that far. But it does not change the force of the reasoning of the judge in this judgment. But I am of the opinion that the judge decided the point. He put it squarely as a question and then he starts to resolve the question in a manner which I consider to be -- he disposes of the matter quite fully.

And in the other two matters of Judge Bisson's judgment and Judge Martin's judgment, the expression -- when they say that wiretapping was legal in Canada, Mr. Justice Martin in his judgment raises the question squarely in this way. And in discussing the question that is raised before him, he says the answer to this question, in my view, depends in part upon whether wiretapping was illegal prior to June 30, 1974. And then he goes on that in order to resolve the question, he says it resolves in part in that question and then he analyzes Section 25, the Bell Telephone Act, Section112 on the Ontario act, and he concludes on that question that arduous surveillance or wiretapping was not per se illegal prior to June 30, 1974. So he again disposes of the section.

And in the last page of his judgment he makes more or less the same statement.

And Mr. Justice Bisson again, although he did not put the question as squarely as Judge Martin did in his

judgment, did express himself under the legality and said that it was legal.

But I have gone -- I have come back -- in my original statement I have gone back a bit from the mischief section.

THE COURT: I think we will take our lunch at this point and ask that the case continue at 2:00 o'clock.

2:00 o'clock.

(Luncheon recess taken.)

THE COURT: Will you please resume, Mr. Landry?

LOUIS PH ILLIPPE LANDRY, called as a witness, having been previously duly sworn, resumed the stand and testified further as follows:

THE COURT: I am sorry I am late, but I had a meeting with various people interested in maximizing the use of jurors.

MR. PUCCIO: May I proceed, your Honor?

THE COURT: Yes.

DIRECT EXAMINATION

BY MR. PUCCIO (Cont.):

Q Mr. Landry, you have heard, I understand, part of Mr. Patenaude's testimony and you have heard Mr. LaValle's testimony concerning -- do you have something you want to bring up?

A Yes. With your permission, my Lord.

THE COURT: Surely.

THE WITNESS: There were two points this morning that I left up in the air, if I may say: one was the point about trespassing. On the face of it I am less familiar with that type of offense since it is dealt with in our municipal courts, whenever it happens. Maybe Mr. Maranda is more familiar than I with this question, but the Criminal Code has one section dealing

with trespassing as such. It reads as follows, Section 173:

"Everyone who, without lawful excuse, the proof of which lies upon him, loiters or prowls at night upon the property of another person near a dwelling house situated on that property is guilty of an offense punishable in summary conviction."

This is the only prohibition there is, and one, therefore at night cannot loiter, prowl around a private dwelling unless he has lawful excuse for being there.

The other sections that we have in the Code that could come close to trespassing, but they are much more serious offenses, is the breaking and entering into a place with intent to commit an indictable offense. One needs that intent to be guilty of the crime.

There is also "everyone who, without lawful excuse, the proof of which lies upon him, enters or is in a dwelling house with intent to commit an indictable offense...." -- so therefore that intent is material to the existence of the crime.

On the other question that your Lordship asked about the Bill of Rights, there is, as I have said this morning, there is nothing specific in the bill of rights dealing with searches as such, but there is Section 1A

of the Bill of Rights, and if I may say, the Canadian Bill of Rights, to clarify what I have said, is a law of Parliament. It does not form part of the Canadian constitution. In fact, a Canadian law could be enacted that might operate against certain of the principles of the Bill of Rights, provided that the Legislature in that law would say so. For instance, we have the War Measures Act, of which judicial knowledge may have been taken in this country at a certain time when we had some troubles in the Province of Quebec. Well, in that act it is declared that the Bill of Rights does not have any effect on that law. Parliament is competent to specifically declare in a law that the Bill of Rights would not apply.

In two cases that I have mentioned already, that of Copeland and Adamson, and that of Barton Roy LeSarge, it was argued that Section 1A of the Bill of Rights would make wiretapping an infringement of the Bill of Rights. That Section 1A reads, "It is thereby recognized and declared that in Canada there have existed and shall continue to exist, without discrimination by reason of race, national origin, color, religion or sex, the following human rights and fundamental freedoms, namely: (a) the right of the individual to life, liberty,

security of the person and enjoyment of property, and the right not to be deprived thereof except by due process of law."

This section was raised in the two cases mentioned, and Judge Martin in his judgment merely quotes Mr. Justice Grant in the Copeland decision, and in the Copeland and Adamson decision the Court held that the police action, that is wiretapping, which was contemplated, did not infringe that section of the Bill of Rights.

The judgment on that point is from pages 400 and following. I think it may not be material that this should be read, but it is in the record at the moment.

THE COURT: All right.

BY MR. PUCCIO:

Q You may continue.

A There was one other comment, if I may, that I wanted to make about my friend, Mr. Maranda's, opinion, that is in respect of Section 1612 of the Civil Code of Quebec.

That section in the Civil Code of Quebec obliges the lessor, puts an obligation on the lessor to ensure peaceable enjoyment of the property leased. So that Mr. Maranda in making a reference to that section, more or less indicates the Bell Telephone would have an obligation to ensure the private

use by the lessee of the telephone lines. And he continues and he says, "A conspiracy to interfere with the lawful use, enjoyment or operation of property would be unlawful."

Now, on this comment, even if -- I disagree with the use of Section 1612 of the Civil Code of Quebec as being applicable to the question, but even if it was, and following Mr. Maranda's opinion, the Court would have to ask itself, assuming that Mr. Maranda is right, was the use made of the telephone lines in this case lawful? That is, if the persons were mentioning that they were going to sell some suits, as I have read, well, one might have wished to ask what was to be contained in the suits.

Certainly, in the United States it would be unlawful to use telephone lines to further a conspiracy involving a transaction in drugs. Now, I would not qualify the use of telephone lines to achieve and in furtherance of a conspiracy involving a transaction in narcotics as the lawful use of such lines. Even if Mr. Maranda was right, we would not be here, as I see the facts, and this is not for me to determine the final issue as to what those facts mean, but if it was to be inferred as being a reference to communication having to do with a transaction in narcotics, I would not interpret that as a lawful use of telephone lines.

Q Mr. Landry, I believe you were here in court for

part of Mr. Patenaude's testimony concerning the authorization for the Vegas projects and for Mr. LaValle's testimony concerning the -- how the actual interceptions were made; is that correct?

A Yes. As I am familiar at least with the substance of Mr. Patenaude's testimony. I was not here when Mr. Patenaude originally testified, but you have --

Q You were not here on the 14th of November?

A Right.

Q Is that correct?

A Right. You have shown to me Mr. -- Mr. Puccio has shown to me part of that transcript so that I would familiarize myself with the circumstances of the interception described in this case.

Q Now, according to Mr. Patenaude, and I am paraphrasing from his testimony of November 14 at page 15 of the transcript -- I will read the question and answer:

"Question: Will you please tell us the general criteria you used during the year 1970 in deciding to authorize the placing of a wiretap on a telephone?

"Question: Before a wiretap -- before authorizing a wiretap we had a number of conditions which had to be met. First of all, it had to fall into three categories which I first related, then the person requesting the

wiretap had to come forth with some concrete information that the necessary methods of investigation had been exhausted; that it concerned a major crime and also that other means of investigation would not likely bring forth the desired results."

I ask you, Mr. Landry, under your view of the law during 1970 in Canada was it necessary for Mr. Patenaude to require members of his command to fulfill various criteria before he would authorize the installation of a wiretap?

A I would be of the view that this kind of authorization would not be necessary to make -- the evidence -- wiretapping evidence legal, or to make wiretap legal.

What is happening here is that we have two concepts, we have the peace officer who is authorized under the Criminal Code of Canada to carry on various duties in law enforcement. This peace officer then becomes a member of an organization, which could be the Montreal police, the QPP or the Royal Canadian Mounted Police. While he is a member of those forces he is, of course, subject to disciplinary action by his superiors; he is subject to certain internal rules within -- or certain framework within which he must work.

But as a peace officer he is working for the Crown, so much so that it has been held in cases of civil liability in Canada and in Quebec that a peace officer -- that

the employer of the peace officer, say if it is a member of the RCMP, who commits an act for which he would be responsible in civil liability, the Crown could not be held responsible for those damages, and what has occurred in the Montreal police force -- I am not familiar with the QPP -- is that their union -- in their labor agreement there is a clause by which the employer will make himself responsible or will pay damages for which the employee, the member of the Montreal police, may be condemned to pay in a civil court.

So that the responsibility between a peace officer, when he is acting under the Criminal Code, is more or less acting on his own; he may investigate, he may do his duty, he may come before the Court and lay charges, he may be subject to certain disciplinary actions by his superiors, but once he is a peace officer he works under the framework of what is called the Criminal Law of Canada and the Criminal Code of Canada.

Therefore, I would feel that a peace officer could conduct wiretapping. But then if there are internal rules and those rules are followed, well, I might say so much the better, it may raise less question, as it was done in this case.

We do have the decision of Copeland and Adamson. In that case the question was raised in a very similar type of framework that has been described to this court, that is, the Police Commission of Ontario issuing directives or regulating

wiretapping.

But in that case the Court had to go as far as saying that in this context wiretapping can be done. But the Court was not asked and did not pronounce itself on wiretapping, that will be conducted by a peace officer outside of that framework; the question was not raised.

But I would be of the view, and as of this moment I would stand possibly alone with that view, I have not seen it given by others, there is no case on it, but my view would be on the basis of the reasoning I have indicated to the Court, that it would still be legal, although the question may not arise in this case, it was done within a framework which is quite comparable to [illegible] which is described in the case of Copeland and Adamson.

(continued next page)

THE COURT: Yes.

THE WITNESS: In that vein, I went further and inquired at the Police Commission of Quebec to determine, first, if it would have, under the Quebec law, jurisdiction to regulate wiretapping as of before June '74 and, second, whether it did in fact issue some regulations or what was the situation, and I have received a letter from the Vice President of the Police Commission of Quebec stating in substance that it is the Police Commission opinion that the law, the Police Act of Quebec, does not entitle the Commission, does not give jurisdiction to the Commission to regulate wiretapping, as it was done by the Ontario Police Commission; second, that the Commission did at no time issue directives to police forces; and, third, that wiretapping or electronic listening or electronic interceptions -- and I quote here, it is in French, "The exercise of wiretapping, the conditions of its practice, was left to the discretion of the heads of each police force until June 30, 1974."

MR. PUCCIO: Your Honor, may I have that letter that Mr. Landry received marked in evidence?

THE WITNESS: There is a mark on that letter, received at a certain date.

MR. PUCCIO: December 12, 1974.

THE WITNESS: That was made by my office.

MR. IANNUZZI: May I look at this for a moment, sir? We have no objection, if your Honor please.

THE COURT: Let it be marked.

THE COURT: So marked as Government Exhibit 9 in evidence in the hearing.

(So marked.)

BY MR. PUCCIO:

Q So, in short, Mr. Landry, it is your opinion that the internal regulations of the Quebec Police Force under which Mr. Patenaude was apparently operating were not essential to the legality and admissibility of the Vegas projects in Canada?

A That would be my opinion, but as a matter of course it appears that whatever internal regulations there were were followed.

Q So finally, in summary, your opinion here today, based upon the questions you have been asked and the testimony you have heard, and your research, is that the wiretap evidence derived as a result of the Vegas projects was legally obtained and would be admissible in Canada, both before and after the passage of the Protection of Privacy Act; is that correct?

A That is my opinion.

MR. PUCCIO: No further questions.

THE WITNESS: I believe there were two other small points that were raised in Mr. Maranda's opinion, and that is one about Section 287 of the Criminal Code, if I may.

THE COURT: Yes.

THE WITNESS: It is alleged that there may be here a theft of telecommunications service. Section 287 of the Code says that everyone commits theft who fraudulently, maliciously or without color of right uses any telecommunication wire or obtains any communication service.

This falls within the category of theft, and my interpretation of this is that, first of all, it must be fraudulently, which means with intent to deprive somebody of something -- and in the French edition there is a comma after the word "maliciously" here. In the French edition it is "maliciously or without color of right." It couldn't be as I -- it may be indicated, I don't think Mr. Maranda means that, but the very fact of one using such a service where he has no color of right, that in itself cannot be an offense. There must be the guilty mind, the element of -- the word "fraudulently" has always been interpreted as not meaning that you must deceive someone to get the service,

but that it must be done intentionally, and I don't think we could obstruct ourself from the definition of theft, which is really to deprive a person temporarily or absolutely of something, or of an interest into something.

I would feel that from the facts of this case that the question of theft of service of telecommunication service would not even arise in that context.

There is the last remark which I would like to make, and it is outside of the questions that we have discussed, and it originates in Mr. Maranda's opinion again. Mr. Maranda states that in Canada such evidence before being admitted in court would have to go through a voir dire, and that is entirely correct. But he also states that this evidence is also subject to the best evidence rule.

In Canada, I understand the rules of evidence to be the same as the rules in the United States. There is no such thing in criminal law as the best evidence rule. Evidence is admissible provided that one can properly prove where it originates and relate it to an accused.

The best evidence rule can be invoked strictly to affect the weight of the evidence. If one has the original document it may have more weight than a copy,

depending on the circumstances, but in criminal law in Canada this is the farthest that the best evidence rule will go.

There is no such rule in Canada and the rule is that any evidence is admissible provided it is pertinent, material to the issue and relates to the charge and the accused, and if it is not the best evidence then it will affect the weight of the evidence and nothing more.

THE COURT: I don't know whether I am quoting the best evidence as it is applied in our system, but as I recall it you must account for the failure to offer the original, and if you can't you cannot use secondary evidence.

If it is a document then you must show that it has been destroyed or lost before you can introduce oral evidence to prove the contents of this document. At any rate, I think that only refers to the destruction of the tapes; is that right?

THEWITNESS: In this case I think it does.

THE COURT: We understand, or so far the evidence seems to show that the destruction of the tapes was the normal and customary way in which evidence of recordings was used, that it was not unusual to destroy tapes and it was a matter of custom.

There I think our cases hold in order to offer the secondary evidence the testimony of what the tapes showed is that the prosecution should show good faith in addition to showing that the evidence was destroyed.

That is, as I understand the rules of evidence in this court with regard to destruction of tapes.

MR. PUCCIO: I have no other questions.

MR. IANNUZZI: Shall I proceed?

THE COURT: Mr. Iannuzzi.

CROSS-EXAMINATION

BY MR. IANNUZZI:

Q Mr. Landry, were you not the attorney who prosecuted Mr. Cotroni's extradition to the United States?

A I was representing the U.S. Government in the petition.

Q And acting as prosecutor against Mr. Cotroni, is that correct?

A Well, if you want to call it that way, yes, although there was not the prosecution, it was a petition for extradition.

Q Well, in any event, you represented the prosecution or the government in --

A Yes, I did.

Q Yes. Are you a counsel for the Royal Canadian

Mounted Police?

A Well, I would like to set the record straight. Many persons interpret my function as that of being sometime the representative of the RCM Police. I never represent the RCM Police. I represent the Queen, as the U.S. Attorney here represents the U.S. Government. I am independent from the police.

Q To the extent that perhaps --

A They don't give me instructions. I give them instructions.

Q When you used the analogy before of being similar, to say, a United States Attorney, you would be as independent of the FBI as the -- I mean, independent of the RCMP as the United States Attorney is from the Justice Department -- the FBI, no?

A The Attorney General of Canada is responsible for the administration and prosecution or civil -- whatever that is, civil, tax litigation involving the Government of Canada. The RCM Police is created by a federal legislation. When the federal police makes an investigation it will turn over to the Attorney General of Canada the results of its investigation and the Attorney General will decide whether the evidence is sufficient or not to prosecute, and if the evidence is sufficient, notwithstanding that, whether prosecution is

warranted.

But we do not take instructions from the police.

THE COURT: Here the United States Attorney is appointed by the Attorney General and the Attorney General heads the Department of Justice.

The FBI also is under the Attorney General --

MR. PUCCIO: Your Honor, I don't know if it is important, but the United States Attorney is appointed by the President.

THE COURT: By the President, I'm sorry.

MR. PUCCIO: And the Assistant United States Attorneys are appointed by the Attorney General.

THE COURT: Yes.

MR. PUCCIO: The FBI is part of the Department of Justice.

THE WITNESS: The RCM POlice is not part of the Department of Justice.

In fact, it is directly the responsibility for the administration of the RCM Police in Canada, it falls within the Solicitor General's Department, which is another department.

THE COURT: I am sorry I made that error. I should know better, but I wanted to say was that both the FBI and the United States Attorney are in the

Department of Justice.

THE WITNESS: In Canada, your Honor, the RCM Police is not the Department of Justice. It falls within the framework of the Solicitor General's department.

(continued next page)

Q Now, sir, you indicated that during your tenure as Crown Attorney -- is that the correct reference, Crown attorney?

A Well, the Crown attorney would relate to my function before the Criminal Court, it does not relate to my function in the Civil Courts, whether Provincial or Federal or Immigration Courts, in all the other matters we are acting -- this is possibly one-third of my work and I am not personally directly involved in the day-to-day affairs in the criminal law in my office, I am involved in a remote fashion since I have to direct in all these other fields.

Q Very well.

Will you classify your position therefore as more of an administrator than, say, as in the criminal field or as an appeals lawyer?

A I would like it to be that but in fact I am in court more often than I would like to be.

Q Yes, sir.

Now, you indicated that in no case during your tenure, at no time during your tenure since 1965, I believe, has there been a case where you have used wiretap evidence where both sides of the conversation were recorded on a tape recording --

A That is correct.

Q Is that correct?

A Yes.

Q Now in addition to that, do you know of a single instance where the RCMP -- withdrawn.

In the various cases that existed and have been prosecuted where there were tapes in existence that were not used?

A I know of one case where we decided for the reasons I have mentioned this morning not to go into that.

Q And that was --

A And that was one case where my attention was drawn that there was wiretap evidence but for, I would say, state reasons we decided that we would not go into it.

Q Would that be on the basis that the other evidence was so overwhelming that you didn't need it?

A In that case we might have decided to lose the case rather than endanger these other investigations which in my view were much more important than the case at hand.

Q Yes.

Do you know of instances where the RCMP has ever admitted to the fact that they have employed wiretapping prior to June 30, 1974?

A What do you mean, that they would have admitted to me personally?

Q In other words, that it was public knowledge that in fact they do wiretap in cases.

MR. PUCCIO: your Honor, I object to this as being irrelevant as to whether the RCMP admits or doesn't admit.

THE COURT: I will allow it.

THE WITNESS: My Lord, there is one aspect of the question which would cause me a problem.

THE COURT: If you can't answer it, say you can't answer it.

A No, some of this might be privileged communication and I may go up to a point, and inasmuch as it might relate to cases that have been prosecuted --

THE COURT: Well, has the Royal Canadian Mounted Police ever publicly stated that "We wiretap," to your knowledge?

THE WITNESS: I don't think we did.

THE COURT: All right.

I don't think it makes it unlawful, Mr. Iannuzzi.

MR. IANNUZZI: I understand.

THE COURT: But you may try, so put it in your question.

MR. IANNUZZI: Not every question is dispositive of the issues, your Honor.

THE COURT: I agree.

MR. PUCCIO: The question is whether any question is dispositive.

MR. IANNUZZI: We hope so.

Q Mr. Landry, you indicated that except for admissions which were involuntarily extracted from an accused -- well, I will withdraw that. I will rephrase that.

In the instance of a statement involuntarily extracted, that would be inadmissible evidence in a Canadian court; isn't that right?

A Yes.

Q But other than that, is it a fact that other evidence however obtained, illegally or otherwise, would be in fact admitted into evidence?

A Now with the additional exception of unlawfully obtained wiretap evidence?

Q Yes.

A That would be so, that evidence obtained unlawfully would be admissible in Canada.

Q And prior to June 30, 1974, the only instance of anything illegal not being admitted into court would be the involuntary statement, in other words, prior to the present wiretapping act all evidence except for involuntarily extracted statements would be admitted into evidence regardless of their

legality?

A To my knowledge, this is all that there would be that would be inadmissible.

THE COURT: How about physical evidence that is, let us say, stolen by the police?

THE WITNESS: Yes, well, that would be admissible.

THE COURT: That is an extreme case.

Q And in -- withdrawn.

And as a matter of fact -- withdrawn.

This area of the law is rather recent in Canadian jurisprudence, is it not, the matter of wiretapping?

A I wouldn't say that.

Q Well, to date is the Chapman-Grange case the only appeals court decision concerned with wiretapping that you know of?

A Yes.

Q And has it been in fact determined, for instance in your case submitted with your opinion which was the Regina against Pearson case, and in fact the court decided the case on the basis that there was no law in Canada at the present time or at the time of the decision prohibiting the use of recorded evidence, in other words that the hinge of the Pearson case was that they would admit into evidence that because there was no law prohibiting the use of that kind of evidence; is that correct?

A Well, yes, that is what the judgment indicated.

Q The judge did not therefore concern himself wholly with the determination of the legality or the illegality of the evidence because of the fact that regardless of its legality it would be admitted into evidence.

A Well, I am not saying that the judge did not concern himself with the legality or illegality, but in order to decide on the admissibility he did not have to pronounce himself on the legality of wiretaps.

Q And in fact he did not?

A Not in the Pearson case.

Q Yes.

May I ask you, sir, there are crimes delineated in the Canadian Criminal Code concerning conspiracy to deal in narcotics; is there not?

A I believe so. I so argued in the Supreme Court of Canada in a well-known case.

Q And the wire recordings that were obtained in this case were obtained in Canada by the Canadian authorities, were they not?

A What case?

Q In this case, the Cotroni case.

A Yes, yes.

Q However, to date there has been no indictment of

Mr. Cotroni or presentation of this evidence in any Canadian court?

A That is true, and I had decided that we would not lay charges in Montreal.

Q Despite the fact that the Canadian police were well aware at the time of the interception of these communications that this was going on and you have the evidence in Canada at the time.

A Yes, but I, representing the Attorney General of Canada decided no charge would be laid in Montreal and we would leave it with the charges laid in the United States.

Q Three years later?

A Not at that time, sir.

Q Well, at the time that you were made aware of the facts that this was going on?

A Yes.

Q When was it, in 1970 at the time?

A I was not made aware in 1970 about these facts, sir.

Q You were not?

A I would be made aware of it when I needed to know about it, and in this case, if you have read, sir, the transcripts as I have read them, and if you were a Crown attorney you would prefer to wait until you have some additional

evidence to tie in those conversations --

Q Did you have --

A (Continuing) -- and one of the suits exactly, and I believe the situation has changed since 1970, and Mr. Puccio will be in a position to tell you that, I am not, but I believe there is additional evidence and I would have been hesitant to prosecute on that evidence alone.

Q Not only have you been hesitant at that time but there has never been a charge brought against Mr. Cotroni in Canada.

A No, and there is nothing wrong about that, sir.

(continued next page)

Q I didn't say there was. I just asked you the question.

A In fact it is quite commonly known that Crown attorneys will decide as to lay a charge in one place rather than in another place because there may be more evidence accessible in that place than in the first place, and the very fact that it is here rather than in the other place may be because the conspiracy or some of the overt acts of the conspiracy which took place in Montreal -- and here the charge could have been laid in Montreal or the charge could have been laid in the United States or the charge could have been laid possibly in Mexico, but the question is where do we lay the charge and it is not uncommon for law-enforcement agencies to consult each other and decide which is the best course to follow in a matter involving narcotics where there are international agreements and where the more than 75 countries have agreed to stop this unlawful trafficking and to cooperate with each other, so it is not uncommon for us to arrive at these results.

Q And in connection with this cooperation between yourself or your jurisdiction and the United States jurisdiction, when was it for the first time that there was a consultation and cooperative effort in this case?

A I would not remember the exact date, sir.

Q Well, can you approximate it, sir?

A Well, I would have known, sir, about the American indictment when the indictment was opened and referred to me for extradition.

Q Before that, sir, do you know whether or not through the DEA and the RCMP there was cooperation at the inception or at the time that these recordings were being made?

A I would hope there would be, but I wouldn't know.

Q Would someone know?

A Well, members of the RCMP or the DEA who did the cooperating, if there was such an occasion.

Q And is it your testimony that none of these people, the DEA or the RCMP, have continued to inform you of anything in this case?

A They would not have informed me while this wiretap was going on, sir, certainly not.

Q Well, not whether they would have, the question is did they?

A No.

Q Now, you indicated that you received a letter, I believe we have had it marked in evidence, from the police commission; is that correct?

A Yes.

Q And is it a fact that the Police Commission has

indicated that it never had the authority to regulate or to authorize the wiretapping?

A The Vice President --

Q Yes?

A (Continuing) -- of the Police Commission says in that letter that in his view the Police Commission did not have the authority to regulate wiretapping.

Q Now, in the case of Copeland and Adamson, which was in Ontario, the Ontario Police Act did in fact make provision, by a meeting of the Board or the Board of Commissions, in March of '69, they in fact promulgated a directive, an authorization concerning wiretapping; is that not a fact?

A Yes.

Q And none such was ever undertaken in Quebec, is that not also a fact?

A They are operating there under the Police Act of Ontario and the Police Act of Quebec.

Q I understand that as to the Province of Ontario there was a lawful authorization as a result of an act promulgated by the Board of Commissioners; is that correct?

A Well, all I can say is that the Ontario Metro Police Commission issued such a directive.

Q Such a regulation?

A It did.

Q Yes, and the Quebec Police Commission never did, did they?

A That is what I am informed of.

Q And as a matter of fact, not only didn't they issue the regulations, but the Vice President of the Commission has just written to you in December, on December 10 of 1974 that according to his understanding of his authority they don't even have the power to do such; isn't that correct?

A Yes.

Q And in the determination in the case of Copeland versus Adamson, one of the bases for the determination as to whether or not the wiretapping in Ontario was legal or illegal, was the fact that the Board of Commissioners had legally, overtly promulgated a regulation concerning the same.

A I would disagree with that, that decision says that the Board has issued directives, it does not question the legality of these directives, and it says that the Court finds that the wiretap that is intended to be done is to be done within the framework of those directives, but I don't think there is an analysis of the legality of those directives, and I did not study the question as to whether or not that commission by the act creating it had the power to issue these directives, I merely stopped at the fact that the directives are there and the court says as long as the police officer does

it within that framework there is no problem.

Q So therefore the determination in the case of Copeland -- withdrawn.

Yes, Copeland vs. Adamson indicated that if the police work within the framework of the promulgated rule of the Board of Commissioners that it would not consider any act undertaken as a result of that act to be unlawful; is that correct?

Do you want me to rephrase that?

A If you would.

Q Yes. In other words, did the court not in Copeland v. Adamson take into consideration the promulgation of the Board of Commissioners in determining the lawfulness of the wiretap.

A I think that the court, the court did take into consideration the fact that there was such directives, but then the court proceeded further and made an analysis of the duties of a police officer within the force and said that wiretapping would be quite legitimate in the performance of those duties of the police officer.

THE COURT: Mr. Landry, aren't you saying that the question which Mr. Iannuzzi suggests would be presented if the police officer did not follow the regulations and then the question would be as to whether

the commission had the authority to curb the policeman in the performance of his duty?

THE WITNESS: Yes, that, that would be of course a definite question that one could ask. What I am saying, my Lord, is that I don't believe that the court in the case of Copeland and Adamson questioned or decided in any way whether the board really had this authority, it looked at the police officers and it said Within its organization he has these rules to abide with and they are going to be abided with --

THE COURT: They are saying it never reached the question because the officer did comply.

THE WITNESS: Right.

THE COURT: And that he had the authority anyway, so the question wasn't reached.

THE WITNESS: Yes.

MR. IANNUZZI: I am sorry, sir.

THE COURT: No, I say that I understand Mr. Landry's testimony very well.

BY MR. IANNUZZI:

Q And in the instant case the police were not conforming to any promulgated regulation of the Board of Commissioners in Quebec, were they?

A No, there were no directives. The only directives

that there were were internal directives within each police force.

Q And were you aware of that fact?

A If I may, if I may add something on that:

When a police force attempts to regulate the use of something which may lawfully be done, it wants to eliminate some discretion on the part of each of its members. For instance, we have a writ of assistance in Canada which is almost always honored in this country, and that writ is in blank and is given to certain officers of the RCMP authorizing them to enter and search various places --

THE COURT: I recall that was one of the causes of the Revolution.

A (Continuing) And within the RCMP, although a police officer will receive from the federal court such a writ authorizing him to go any place where he has reasonable grounds to believe that there are drugs, he may enter without ever going back to a judge, but the RCMP police because of criticism across Canada of the use of these writs by possibly certain officers, and I have not checked the facts, but since it is the -- well, this is the type of thing which may create criticism, so the Commissioner has decided that those writs which are going to be used, that is officers are authorized to use them, but he is telling the officer that notwithstanding the power that

you are granted by the Narcotic Control Act to use these writs, every time you are going to use one you are going to account to me and give me fully all of your reasons for using it.

Now this is an internal directive within the police force, but the police officer could go out and use a search warrant any time he wishes to, but the commissioner says, If you want to remain in my force you are going to account to me.

Now that is the kind of regulation in my view which is the sort of regulation that one may wish to impose to limit the otherwise possibly very wide discretion that may be left to a peace officer and where you want to regulate the use of his discretion, and it does not amount to any more than that.

(continued next page)

BY MR. IANNUZZI:

Q You indicated that there was no law prohibiting wire tapping; is that correct?

A That is correct.

Q And then you indicated also that there were -- that as long as certain behavior has no statute making it unlawful it is not unlawful; is that correct?

A Unlawful within the criminal sense, that is correct.

Q Yes.

But there are acts -- there are statutes and there are laws in Canada regulating the invasion of and interference with tele Communications, interception of communications, etc.; is that not so?

A Interception within the meaning of the Bell Telephone Act, yes, interception and divulgence within the Telephone Act of the various provinces, yes.

Q As a matter of fact in the case of Grange and Chapman, they were prosecuted for the crimes of unlawful trespass or interception of messages and the divulgences thereof; is that correct?

A They were tried for conspiracy --

Q Conspiracy --

A (Continuing) -- to intercept and divulge

telephone communications contrary to Section 112 of the Ontario Telephone Act.

Q Yes.

And that prosecution for conspiracy to intercept messages was before June 30, 1974; was it not?

A Yes, and that conspiracy had as its object an unlawful act for this reason:

That a criminal offense may be created only by the Federal Authority and what the province is creating is what falls under Section 338(2)(a) or (b) of the Code -- is it 338(2)(b) -- not 338, I am sorry, 423(2)(a) of the Code where we speak of an unlawful purpose:

"The word 'unlawful' will encompass any matter which is made to be an offense under a provincial statute."

Q And the gentleman, Chapman, who was prosecuted and convicted, and this is the only case that went up to appeal and was affirmed, was in fact a policeman?

A He may have been in fact a policeman as you may be a lawyer when you are driving a car and speeding, but that doesn't -- because, because he is a police officer doesn't change the situation at all, he was a citizen of Canada conducting wire tapping, the fact that he was a police officer is complete immaterial, it has nothing to do with the case.

Q Well, at Page 150 of the decision where Judge Arnup -- is that the correct pronunciation?

A Arnup.

Q Well, Page 150 of his decision where he states the relevant facts as they appear in the factum, didn't he say exactly the following that:

"The Appellant Chapman at the relevant time was a Constable with the Metropolitan Toronto Police Department, acting in a capacity as a plainclothes detective."

Now, he wasn't a policeman swimming in Acapulco he was a policeman acting in the capacity of a plainclothes policeman.

Now I ask you very plainly, is not a part of the recitation of facts on Page 150 of the decision --

A Well, if it is --

Q I'm asking you if it is, and I'm asking you to refer to Page 150, the first paragraph thereof, I am asking you whether I am not stating what the Judge said specifically when he announced that Chapman was acting in a capacity as a plainclothes detective?

A I would agree, my lord, that that is there, that is taken completely out of context and it should be read in context.

Q Now I ask you to read that context that you

claim the Judge distinguished this man as not acting as a policeman.

A First of all it starts with the trial court decision --

Q I'm asking you, sir, a specific question --

MR. IANNUZZI: Your Honor, I have asked the question of this witness, I realize of course he is an attorney giving an opinion, but I think perhaps if he would answer the question it might save us a little bit of time.

THE COURT: I am for that, I am for saving time.

MR. IANNUZZI: I am for that, too.

Now may I have --

THE COURT: I find we are in agreement finally.

BY MR. IANNUZZI:

Q Mr. Landry, will you point to something that Judge Arnup indicates that Chapman was not in the capacity of a policeman at the time he was acting and therefore he is not considered a policeman at the time that this decision was rendered?

A The next paragraph, sir, "About 27th August" --

THE COURT: Excuse me.

Where would I find that cited?

MR. IANNUZZI: It is in Appendix 2 of Mr. Miranda's decision, sir, it is under the case of Chapman-Grange and it says --

THE COURT: It may be helpful if I read it, too. What page is it on?

MR. IANNUZZI: The page starting at the last paragraph of 149, sir, and then going up to the top of 150.

THE WITNESS: Now if you read the next two pages, and this would be a summary of what is in there, you will find that Grange -- Chapman, rather, was working for Canadian Driver Pool, Limited.

MR. IANNUZZI: I have asked the question and I would ask the Court to direct an answer.

Is there some specific wording that the Judge used to say in the opinion, I am considering Chapman not as a policeman but as a private citizen?

THE WITNESS: Well, sir, it is never suggested in that decision that Chapman in that case was working in his capacity as a police officer in doing what he was caught doing.

BY MR. IANNUZZI:

Q Does it indicate in the decision, however, at Page 150 that he was acting as a policeman at the relevant

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time of the charges?

A Well, it states that he was a policeman, a constable, and that he was acting in a capacity as a plain-clothes detective.

Q Does anything in that decision, sir, say that the Court did not consider him a policeman?

A This is strictly, if the Court had been looking after me, it would have said I was a lawyer at the time but this man here in this case it is quite clear was employed by the Canadian Driver Pool, Limited, and he had bought cassettes --

(Continued on next page)

MR. IANNUZZI: I object the answer as not responsive.

I asked whether or not --

THE COURT: If you are asking Mr. Landry to interpret the facts and whether there was a material fact assumed by the Court in reaching its determination, I think I should be just as capable of reading it and all you need do is ask him to assume that the Court had assumed that Chapman was acting in the capacity of a plainclothes detective would he have the same opinion, or would his opinion be changed, that is all.

MR. IANNUZZI: May I ask the same question in a different way, sir?

THE COURT: Surely.

BY MR. IANNUZZI:

Q Mr. Landry, did the Court in the only Appellate determination made on this subject indicate that a policeman may wiretap --

MR. PUCCIO: Excuse me, we are talking about the Chapman case?

MR. IANNUZZI: Yes.

Q Did they distinguish between a private citizen and a policeman?

A The Court, my Lord, in this case did not deal

with this matter as something which had been done by a police officer engaged in law enforcement.

THE COURT: You say that that statement of fact made was immaterial to the decision?

THE WITNESS: That is correct.

THE COURT: In other words that he was acting as a plainclothesman?

THE WITNESS: My Lord, I submit respectfully that this sentence here is taken out of the context of the two next pages, and that by reading the two next pages it becomes evident that this man was working for a company by the name of Canadian Pool Drivers, and that by looking over the right recitation of facts which has been published with the judgment and which decision went up on appeal, and in fact the trial judges quoted on the facts repeatedly by the Court of Appeals, the fact is that when this man was caught he showed his badge to the police officer who arrested him trying to hint that he was engaged as a police officer in what he was doing and in fact it was found that he was not so doing, that he was engaged in a moonlighting operation with a firm called the Canadian Drivers Pool, and they were supplying this service to their employers of wiretapping a union organization.

THE COURT: You are saying that the opinion says that assuming he was engaged as a plainclothes detective that his wiretapping was not a part of his duties as a plainclothes detective but that rather he was working for the trucking outfit.

THE WITNESS: Yes, in this case he was not at all engaged as a police officer, he may have been a plainclothes officer but he was not in this case engaged in his work as a police officer, not at all, and I fail to see, my Lord, where it would be suggested anywhere in the pages that he is charged for having wiretapped in the execution of his duty as a police officer.

BY MR. IANNUZZI:

Q Is there anything in that decision that indicates that he was in fact, despite his claim of being a police officer not acting in the capacity of a policeman?

MR. PUCCIO: Your Honor, I'm going to object to this whole line, the opinion speaks for itself, I submit it is clear.

THE COURT: I am trying to find out whether it was Chapman or Grange or both -- who did the wiretapping?

MR. IANNUZZI: Chapman, sir.

THE WITNESS: Yes.

On the previous page, My Lord, there appears the following:

"I state the relevant facts as they appear in the factum of Mr. Martin, which was accepted as correct by counsel for the Crown. The Appellant Grange at the relevant time was the President of Canadian Driver Pool, Limited. That company carries on business in Toronto and is associated with three other companies."

THE COURT: So in other words Grange was not a police officer.

THE WITNESS: No, Chapman was, Grange arranged with Chapman for purposes of his company and he was directing to have this wiretap done.

This is no suggestion that this was done by the police officer as a police officer, this man was --

MR. IANNUZZI: If your Honor pleases, the only --

THE COURT: That is the dispute, I can see it.

MR. IANNUZZI: The only difficulty with Mr. Landry's reading of what Mr. Grange was doing is that he jumps over the paragraph that says what Mr. Chapman was doing and leaves it out completely.

THE COURT: I have read it, so you don't have to have Mr. Landry read it.

MR. IANNUZZI: Very well.

BY MR. IANNUZZI:

Q And do you know, sir, of any legislation, Canadian Legislation, Provincial Legislation which specifically indicates that the provisions of the Criminal Code, Section 287, 387, 423 does not apply to policeman?

A It certainly does.

Q Where is that legislation, sir?

A I mean those sections apply if a police officer commits a crime; it is not because he is a police officer that he is going to be exempt from prosecution.

Q Does not Section 287 and 387 deal with the theft of Kelly Communications?

A 287 does deal with the theft of Kelly Communications.

Q Is there a specific statute anywhere that indicates that policeman are not subject to this section of the Criminal Code of Canada?

A To the contrary, I would say if a police officer at his residence steals telephone service without paying for his telephone line, he is certainly guilty of that offense.

(Continued on next page)

MM fls.

Q And is there any indication that he can steal it from someone else -- withdrawn.

Is there any legislation that permits him to take wire or wiretap --

THE COURT: To intercept communication?

MR. IANNUZZI: Thank you, very much.

Q Is there any legislation that indicates that a policeman may intercept tele communications?

A Of course.

Q There is such legislation?

A Now, certainly.

Q Prior to July 1st, June 30th, 1974, was there in fact on the books of Canada a law prohibiting that theft of tele communications?

A Section 287.

Q And was there at the time existing a statute indicating that a policeman was not subject to Section 287?

A All citizens of Canada, including police officers are subject to Section 287.

Q Is there any indication of any divergence from the specific language of 287 that says, under certain conditions policemen are authorized to contravene this section.

A A police officer is not authorized to contravene

this section, but the question is one will have to ask himself what is a contravention of that section, which is quite a different matter.

THE COURT: Mr. Landry, I think the section says, whoever, unlawfully --

THE WITNESS: Fraudulently, maliciously and without color of right.

THE COURT: Does not it say unlawfully?

THE WITNESS: It says fraudulently, which is the equivalent.

THE COURT: Are you saying that a police officer in the exercise of his duties intercepts a telephone call, is not fraudulently and it is under the color of right?

THE WITNESS: I am saying that the interception of a telephone call as, but normally, it is not for me to substitute myself for the Court, but if I may, my opinion is that the interception such as described to this Court in the first place would not amount to theft of tele communication service because there was no service which was stolen.

THE COURT: I understand that, but come to the other phrase, is it, assume that it was intercepted, that the telephone call did not go through to the

recipient.

THE WITNESS: If it was entirely intercepted, that would be prohibited by the Bell Telephone Act, and whether that amounts to an offense theremay be some distinction between the word misdemeanor which has no more meaning in the Canadian law.

THE COURT: Would you say that was an interception on the color of right; isn't that the phrase in the section?

THE WITNESS: Color of right?

THE COURT: Whoever fraudulently or without color of right.

THE WITNESS: Color of right means that the person doing the act believes in a certain situation of fact, which if it had existed would have made its act lawful, such as, if I am putting lumber on my property and I cut a few trees over the line while I believe I am still in my property, there is a color of right. I am wrong in the fact but if the facts existed as I thought them to be I would not be committing an offense.

I am not committing an offense, however.

But the very act that I am doing something without the color of right does not mean that I

am necessarily guilty of the offense. There must be the guilty knowledge and the guilt intent. It is certain that one who steals something normally, we are talking of something that does not belong to ones self and if there is a color of right, well, that is a defense I can bring forth and say I believe that is my property. The Crown will have to prove that I have the guilty intent to start with. I would submit that in circumstances of this case we do not even cross the first point as to the act itself, that there was no service stolen at all; so that we do not even have to ask the question as to the guilt in mind because there was no act committed.

BY MR. IANNUZZI:

Q Mr. Landry, does not Section 287 indicate that a person who -commits the theft, who abstracts -- withdrawn.

Who uses any tele communication, wire, and receives signs, signals, writings, images or sounds or intelligence of any nature, does that statute not indicate that, Section 287, subdivision 2 thereof, that tele communications in this statute means the transmission or reception of signs, signals, writings, images, sounds or intelligence of any nature; is that part of the statute?

A Yes, but you see --

Q No, the question is, is that part of the statute?

A Then I will say no to the question.

MR. IANNUZZI: It is not.

If your Honor please, I will offer into evidence --

THE COURT: I can take judicial notice that that part is part of the judicial statute.

THE WITNESS: What I mean --

THE COURT: You can only answer the question that is asked.

I know there is more to it, and Mr. Puccio will take longer on redirect.

MR. IANNUZZI: May we have a direction that there is no question?

THE WITNESS: The word tele communication as defined about what one may commit theft of is not tele communication, it is tele communication services, and the two words cannot be read isolated.

MR. IANNUZZI: May I ask that that answer be stricken as not an answer to any question posed.

THE COURT: The answer will be stricken.

Q Mr. Landry, did not the Judge in the Copeland-Adamson case make a determination as to the violation of the Telephone Act, the Bell Telephone Act by indicating in his

opinion -- may I just have a moment to confer with my own notes, your Honor?

THE COURT: Yes, certainly.

Q -- that in his opinion after this defining intercept, as an interference, that he has made a determination in that case that there was no violation because he said, "I do not believe that wiretapping which does not impede conversation between the parties, nor impede its progress can form a breach of such a section."

Did he say that?

A Yes.

Q Did he determine, did he say what his decision might be when he found that wiretapping which does impede the conversation?

A No.

Q Did he say what he would have found concerning wiretapping that did impede the progress?

A No.

Q And would it be your opinion that a case in which it were found by a Court that there was interference or impedence of the telephone -- of the tele communications that that could be distinguished from the case of Copeland and Adamson?

A Well, I would wish to say yes or no to that. It

could certainly be argued.

Q I ask you this, based upon the decision of the judge in the Copeland-Adamson case, if he had been presented with evidence of interference or interruption of service, would his opinion be different based on what he had indicated in Copeland-Adamson?

THE COURT: You are asking this witness to tell you what a judge is going to do, when the judge might not be able to tell you.

MR. IANNUZZI: I withdraw the question.

THE WITNESS: I might answer that question in a few years.

THE COURT: Is that the way it goes, when you are a failure as a Regional Director of the Department of Justice, that when they promote you and put you on the bench --

THE WITNESS: Well, yes, the procedure might be that, similar to the United States; so I don't know what it is in the United States. I feel I would be on a safe footing by saying that.

I would like to say that I am sorry for answering 287 as bluntly as I did, but I should have answered, yes.

THE COURT: You have to witness lawyers, American

lawyers trying cases on cross-examination.

They insist on a yes or no answer as abortive as the question appeared to be and as inconsequential as the answer might seem, they want to know the answer to that and nothing more and they are entitled to that under our practice.

I noticed, this, the previous witness Mr. Patenaude had trouble sticking to answers and Mr. Polakoff was a lot more gracious than Mr. Iannuzzi, when he let him go on and answer in his own way; but they have the right and I haven't witnessed a Canadian trial but I witnessed a British trial which is much different than ours, I might say, and I might say I prefer ours, but --

THE WITNESS: I might say, my Lord, that I am used to this.

THE COURT: The cross examiner strictly controls the examination, if he wants to.

BY MR. IANNUZZI:

Q There were in fact laws against wiretapping prior to June 30, 1974, were there not in Canada?

A My Lord --

THE COURT: In other provinces.

THE WITNESS: I would not wish to answer the

question unless in a definition, unless there is a definition given to the word wiretapping because then I could answer yes or no and be wrong on both answers.

THE COURT: There is another alternative, yes or no or you can answer yes or no.

THE WITNESS: I cannot answer yes or no. I can tell you what the laws were.

Q Let me rephrase it this way: prior to June 30th, 1974, there were statutes which prohibited the interference with tele communications in Canada, correct?

A Within the sense of Section 25 of the Quebec Telephone Act and within the meaning also of the Bell Telephone Act, and no more, yes.

Q And you and I have been talking about the interception of tele communications. What does that mean to you?

A Well, up until the present time we have a strict definition in the Criminal Code which may have been moderated by the distinction of the Bell Telephone Act and the meaning to be given to it in the section of the Criminal Code.

So, my, the meaning of the word to me, is that in the Criminal Code now and it was before that and still in relation to the Bell Telephone Act, the meaning given to

it by Mr. Justice Grant --

Q However prior to the legislation being enacted in 1974, in fact, Judge, let me just get the name again, Arnup, and Judge Moore spoke of interception relative to someone connecting wires to telephone service and listening; is that correct?

A That was done. The answer is, yes.

It was done within the context of Section 112 of the Ontario Telephone Act and that context is a very specific context.

Q Is it not the Ontario Telephone Act similar to the Quebec one?

A Yes, but not similar to the Bell Telephone Act.

Q I am asking you, sir, isn't the Ontario Act that Judge Moore and Judge Arnup was speaking of similar to the Quebec Telephone Act?

A The answer is, yes, but you are using words out of context.

(Continued on next page)

Q I am not using any words.

I am asking you if they were similar?

A They are similar but the word intercept --

Q I am not asking about intercept. I am asking if the two acts were similar?

A I thought the first question to start with was intercept --

Q Are they not similar?

A The two acts, two acts, 112 of the Ontario Telephone Act and Section 25 of the Quebec Telegraph and Telephone Acts are about the same, word for word.

Q And in determining the Quebec Telephone Act, the 112, which is similar to the Quebec Telephone Act, 25, Judge Moore in the Court of Original Jurisdiction and Judge Arnup in the Appeals Court both decided that was interception by listening to a communication, regardless of whether it didn't get to the other end of the phone, regardless of whether it didn't interfere and they said that is interception; did they not?

A I would not be prepared to give a yes or no to that because it is decided specifically in the context, the key word in that section is not interception. It is to divulge and that is what makes it a crime otherwise it is strictly eavesdropping which is not an offense.

Q Did not Judge Moore say in that case I am satisfies on the evidence, and this is in reference to Section 112 of the Ontario Telephone Act, I am satisfied in the evidence that some of this information would be and was obtained through the interception of telephone messages passing over the telephone lines.

Didn't he say that is what he found, that it was interception of telephone messages, although the messages got where they were going; isn't that correct?

A If you have in the judgment, I do not have all the parts in my mind, if he says that, then I say yes he says so; but again in the context of the Ontario Telephone Act --

Q Which is almost word for word with Section 25 of Quebec Telephone Act; isn't that correct?

A The answer is yes, but that court makes a very clear distinction with the Bell Telephone Act where Judge ARnup says as yet Parliament has not passed any legislation with respect to wiretapping or other misuse with respect to telephone calls and Section 25 of the Quebec Telephone Act does not constitute such Parliamentary action.

He said that that section 25 is not a law of Parliament relating to wiretapping or other misuse of telephone calls.

Q So what he is saying is the Bell Telephone Act is not an Act of -- it is not an Act of Parliament?

A We are not talking about the same thing. I am saying that the Court of Appeals, Mr. Justice Arnup distinguishes the Telephone Act of Ontario and the Bell Telephone Act and with respect to the Bell Telephone Act in Page 126, he says, that Act and that Section is not a law of Parliament but not an Act of Parliament which was passed with respect to wiretapping or other misuse of prior telephone calls and therefore Mr. Justice Arnup says Section 25 of the Bell Telephone Company of Canada does not deal with wiretapping.

Q He does not say, he did not define interception there?

A That section used the word intercept but Mr. Justice Arnup distinguishes that.

Q He says it is not an Act of Parliament?

A He says -- he does not say that. He said it is not an -- I think one must read the whole sentence, as yet.

Q What page is that?

A Page 156 the second paragraph.

Q Thank you.

He is saying there that section 25 of the Bell

Telephone Act of Canada obviously does not constitute parliamentary action; isn't that right?

A No, he says what is written here.

Q He does say that and there is no question about that that the Bell Telephone Act, theBell Telephone Company of Canada is not parliamentary action. Nobody said that is a Parliamentary Act.

A Well, it is.

Q I am saying does that mean that he didn't say that interpretation is to receive sounds over a wire?

A What I am saying is that Section 25 of the Bell Telephone Act uses the words intercept, yet the same judge whom you are quoting under Section 112 of the ONtario Act which used the word intercept turns around and says that the Bell Telephone Act which uses the word intercept does not deal with wiretap; so that in the mind of this judge it would appear to me that he felt Section 25 of the Bell Telephone Act did not deal with wiretapping, which would be listening to a telephone line.

Q Where does he say in that paragraph you are referring to, the second paragraph on Page 156, in addition to saying that the Bell Telephone Company of Canada is not parliamentary, where does he --

A He says as yet Parliament has not passed any

legislation with respect to wiretapping or other misuse of telephone calls.

Then he continues on and speaks about one act of Parliament.

Q Does he say as you say that it does not deal with wiretapping or is that you who are making that decision?

Does he say, I am asking you, does he say that or are you taking that out of context and assuming that is what he meant?

A I am saying this is what he says in the following sentence, Section 25 of the Bell Telephone Company of Canada Act does not constitute such parliamentary action.

What parliamentary action?

Parliamentary legislation with respect to wiretapping.

Q He does not say Section 25, does not stand for itself as an Act relating to the Bell Telephone Company prohibiting telephone communications?

A Oh, no, he does not say that.

MR. IANNUZZI: I have no further questions.

THE COURT: Mr. Klar?

CROSS-EXAMINATION

BY MR. KLAR:

Q Are you familiar with OUIMET Commission?

A I know of the OUIMET Commission. We had some of the things published by the Commission but I would have to admit that its report as a whole is not fresh in my mind.

Q Have you ever read that portion entitled The Report of the Canadian Committee on Corrections, published in 1969?

A I believe I have read it, but if you would ask me to comment on it I would totally be unprepared to do so.

Q Have you read this portion or are you familiar with this portion which says that the Committee is of the view that wiretapping and electric eavesdropping for law enforcement purposes under conditions of strict controls should be authorized by legislation?

Are you familiar with that?

A Yes.

Q And as you have already testified there was no legislation in effect in Canada in 1969 authorizing such electronic interception, isn't that correct?

A Yes, but I would like to make a comment on that.

Q Well, we will withhold that until we go a little further.

Are you familiar with the phrase -- withdrawn.

Are you familiar with the police act with the

Province of Quebec which went into effect on June 21st, 1968?

A Yes.

Q Does that provincial legislation contain any provision or authority conferring to any provincial government, police officer or any other person, conferring the right to wiretap or to allow or to use wiretapping in Quebec; yes or no?

A The law does not speak about wiretapping.

Q So therefore again we have no legislation which confers the right on a police officer or any other provincial official such as Mr. Patenaude giving him permission to wiretap, but we do have other valid legislation as suggested by the Grange decision which makes it a misdemeanor to intercept or obtain an electronic communication; isn't that correct?

Yes or no?

A You said we do not have legislation authorizing --

Q I am referring to 1968 or 1969, at the time of the enactment.

A With respect to specific legislation, the answer is that is correct.

(Continued on next page)

Q That's correct.

A Now, the other part of the question was -- but there are others -- I am not answering yes to the whole question.

Q But there was at definite times specifically Section 25 of the Quebec Telephone Act which was valid legislation in making it a crime to intercept an electronic communication?

A The answer to that is no. That section does not create a crime, it creates -- we don't call it a crime in Canada --

Q A summary --

A It falls within the category of provincial offenses, and, second, the offense is not to intercept, again, but what is prevented is from intercepting and divulging otherwise one would be lawfully authorized or directed to do so, and all of those words are very important.

Q You had referred earlier, Mr. Landry, about a case where the RCMP preferred losing the case rather than using the wiretap evidence; is that correct?

A That is not so. I have not said that. The RCMP never prefers to lose or to win a case. They present the evidence to us and we had decided not to use that evidence, win or lose. The police had no preference. We call the shots,

if I may speak that way.

Q Did the RCMP in that case obtain the wiretap evidence themselves or did some other Police Department or Provincial Office obtain that wiretap evidence?

A At this time I couldn't state.

Q You don't know?

A -- whether it was one or the other force that had obtained it.

MR. KLAR: I have no further questions.

THE COURT: Mr. Rosenthal?

MR. ROSENTHAL: Yes, your Honor, just a few.

CROSS-EXAMINATION

BY MR. ROSENTHAL:

Q Mr. Landry, just for the record, your system in Canada closely parallels our own, does it not; you don't have barristers who try one side of the case and then might try the other side of the case on a different day?

A Yes.

Q In other words, you are a professional prosecutor, those persons working in your office would also be prosecutors; is that correct?

A The persons working in my criminal division would be called prosecutors.

Q Excuse me, with that preface.

A Yes. But we do employ what we call Agents. For instance, in Montreal there is a major combine or anti-trust suit which is conducted by Mr. Bruno Patras on our behalf, and I have been at the same time pleading against Mr. Patras, prosecuting the case where he is the defendant, acting for the defendant.

Q But more specifically, yourself, you are a professional prosecutor, is that correct?

A I would --

Q You are a prosecutor, I will take out the word "professional"?

A I am a Department of Justice lawyer for whatever that means.

Q You are similar to the United States Attorney, as you have mentioned?

A Yes.

Q In other words, you, as you would appear in a Court of Canada, would appear as representative of the Crown, as you say?

A Yes.

Q And you would argue the prosecutorial side of the question, would you not?

A Yes.

Q In other words, Mr. Miranda might argue the

defense side of the question?

A He always does.

Q And you --

A Except I've heard very recently that there is possibly a case where he might have been acting as prosecutor, to protect the Bell Telephone Company.

Q Well, aside from that --

A But I don't know if we will have an occasion to see his talent.

Q Aside from that, Mr. Landry, would you say that your opinion represents the prosecutorial view on wiretapping?

THE COURT: Suppose you say the Government view.

Q The Government view, or the Crown view, whichever term you would prefer to use?

A Well, it's my view, which is shared by --

Q Other prosecutors?

A At the moment, which would be shared by senior officials of my department with whom I have tested my views, for whatever that is worth.

Q And they are part of the Government, also, is that correct?

A But when I am here I don't stand on my Government, I stand on my own two feet.

Q Mr. Landry, please answer the questions.

Mr. Miranda, on usual occasions, would represent the opinion more of the defense, just as I would most likely represent the defense opinion.

A Of course, although we sometimes share the same views because, after all --

Q I know, but I am talking about wiretap. You are not an independent expert here without any opinion representing one side or the other, are you, Mr. Landry, an independent, unbiased, completely unbiased expert on wiretapping?

A I can say I am not paid to give these opinions, I am coming here freely and voluntarily without any advantage to myself, and I fully believe in the opinions I have given and wherever I would be, whether in the law faculty, here or in a court representing a defendant or the Crown, I would have the same opinion.

Q Mr. Landry, since I have been here I have heard dozens of uncalled for opinions from people from Montreal.

I wonder how long a case takes to be tried there with all this opinion being given.

THE COURT: Probably a day or two, the same case that would take us a week or two weeks.

MR. ROSENTHAL: I think it would be opposite,

your Honor, I think they like the French language so much that they go on and on.

THE COURT: Don't get any idea that we are in the 21st Century and we are in the 19th. If anything, it is the other way around.

MR. ROSENTHAL: Your Honor, I don't think that there is any difference in centuries, but I do find that when a question calls for a few words answer you get a lecture.

THE COURT: Isn't that par for this course?

MR. ROSENTHAL: Your Honor, I did not ask for a lecture..

THE COURT: I am talking about your dissertation right now.

MR. ROSENTHAL: I am finished with my dissertation. I would have been finished a lot shorter --

THE COURT: Now the question.

BY MR. ROSENTHAL:

Q Mr. Landry, when you argue in the Courts of Canada, do you argue as an independent expert or do you argue as a prosecutor, or member of the Government, or Member of the Crown, however you want to say it?

A Well, sir, I am stating to anyone who wants to hear that I argue a case for the prosecution, but I hope

have a very independent mind, and I have asked for acquittal of persons --

Q Nobody is talking about your integrity.

When you appear in the Courts of Canada do you appear as a prosecutor, as one representing the Government's position, as an advocate of the Government's position; would that be a fair statement?

A Of course.

Q That's all I have been asking you right along.

Now, Mr. Landry, you stated that something that you believe that a police officer cannot -- I will withdraw that.

Mr. Landry, do the police in Montreal have a license to break the law?

A I think the answer is evident.

MR. ROSENTHAL: I have no further questions.

THE COURT: Any further questions?

Do you have any, Mr. PUccio?

MR. PUCCIO: I have one irrelevant question to add to some of those, your Honor.

REDIRECT EXAMINATION

BY MR. PUCCIO:

Q Did the RCMP or did the Crown win the case that you have testified about where the wiretap evidence was

not used?

A We did.

MR. PUCCIO: I have nothing else.

RECROSS-EXAMINATION

BY MR. IANNUZZI:

Q Do you know whether or not Mr. Maranda has represented Vincent Cotroni in Canada?

A No, I believe there was some mention -- may have been a question of crossing wires that came about with respect to some attempts to obtain the Vega tapes.

It is Mr. John Paul St. Marie that has been representing Mr. Vincenzo Cotroni all of the years I have known Mr. Cotroni, and it is Mr. St. Marie who is a former narcotic prosecutor in Montreal.

Q When Mr. Puccio indicated in a communication that Mr. Maranda did so, it was based on some information that may have been --

A It is certainly a misunderstanding between myself and Mr. Puccio.

MR. PUCCIO: Let me correct that for the record, your Honor.

In writing that letter to the Court I did indicate that Mr. Landry had informed me that Mr. Maranda was the counsel for Vincenzo Cotroni in

Canada, and that is incorrect. It was a misunderstanding because I had been informed, I don't believe by Mr. Landry, that Mr. Menard was present at a restaurant with Mr. Cotroni when he was arrested in connection with this case and was later present when Mr. Vincenzo Cotroni was arrested recently in Canada, and I assumed that he was his attorney, but --

THE WITNESS: I believe that was strictly a dinner.

MR. PUCCIO: That was the connection I had between Mr. Maranda and Frank Cotroni and Vincenzo Cotroni, and I stand corrected that he was not an attorney for him.

THE COURT: Anything further?

MR. IANNUZZI: I just wanted to clear that up, Judge.

THE COURT: You may step down.

(Witness excused.)

THE COURT: The Government's next witness.

MR. PUCCIO: Mr. Iannuzzi indicates he wants to call an expert witness of his own on the law in Canada and he would like to interrupt our case, and I have no objection.

MR. IANNUZZI: Would that be all right, sir?

A 920

THE COURT: Surely.

Is this witness scheduled to return today to Canada?

THE WITNESS: No.

MR. IANNUZZI: Yes sir.

THE WITNESS: No, I am scheduled to return Sunday. I was told that you were ready to sit on Saturday and Sunday as well. That was quite convenient for me because I am busy on Monday and Tuesdays.

S E R G E M Ē N A R D, having been duly sworn by the Clerk of the Court took the witness stand and testified as follows:

DIRECT EXAMINATION

BY MR. IANNUZZI:

Q Mr. Menard, what is your occupation, sir?

A I am a lawyer in Montreal.

Q In what jurisdiction is it that you are admitted to practice law?

A We are not admitted in any special -- jurisdiction? I was admitted in Quebec Bar.

Q You are an attorney in the Country of Canada?

A Yes, in Montreal.

Q And may I ask, sir, if you would be kind enough to inform the Court of your educational background, your professional associations, your qualifications concerning the

law, your study, any teaching or instruction that you give?

A Yes. Well, I have made -- I have the same education that aNy lawyer in the Province of Quebec has, that means I have made my classical course obtaining a BA, I have made -- obtained degrees also in law at the University of Montreal and I passed my bar exams --

Q May I ask you to speak a little more loudly and slowly.

A I have passed my bar exam in 1966. Since then I was employed first in the Crown attorney's office in Montreal, which was a provincial jurisdiction, until I think, August, 1967 when Mr. Landry called me to go in his office as a federal attorney in Montreal.

I was made another offer in February, 1968 when I left Mr. Landry's Office and I have practiced with a private firm for one year and I have practiced on my own since then, sometimes alone, sometimes with partners.

I have also teach, strange enough, at about the same place that Mr. Landry, I have teached at the University of Montreal, for, I think, two years --

Q What do you teach there, sir?

A Criminal law. I have only practiced in criminal law since I have passed my bar exam.

I have also teach at University of Ottawa for

one session for the last -- I think five or six years I've also teach with Mr. Landry and Mr. John Paul and many other lawyers in the Professional School of the Bar of Quebec, which give the last year to the law students, and I have teached there also criminal law.

Q Concerning your background and your experience, have you had matters which relate to and require you to make determinations and to study concerning the law of Canada relative to wiretapping, electronic surveillance and related fields of law?

A No. I have never -- I was never called in my professional capacity to make special studies to that. But it was for me a matter of interest. One of my --

(Continued on next page)

Q Have you made such studies?

A Yes, I have made such studies because it interested me in this way: In 1973 when the bill for the Protection of Privacy Act was presented into Parliament, I was at that time, and I still am actually, judicial counsel of the Quebec Federation of Professional Journalists, and some of them, the president of them, of that Federation was at that time employed by his paper in Ottawa, he was attached to the Parliament in Ottawa, and since we had made the studies together he called me and says, "Everybody is getting the impression that as far as wiretapping is concerned," he is prohibiting what was defended before, "And would you look into that matter because our paper will be interested in publishing an opinion on that matter, of course, your opinions and somebody else's opinions."

So this is when I was interested in wiretapping.

Q As a result of your interest, have you made extensive studies into the law of Canada concerning wiretapping?

A Yes. At that time I have made extensive studies. Of course, I also made extensive studies before I came here this afternoon. I must say this is quite a technical point in our law which does not represent more interest because of what Mr. Landry has explained before, that whether it's legal or illegal, or whether the evidence

obtained has been illegally obtained or legally obtained, really in practice it's not important in Canada because it is always admissible if it is pertinent. So it is very seldom that we will have to search that point in preparation for a case.

Q As a result, however, of your studies, you would testify here that in fact, regardless of whether it is legal or illegal, the Canadian law would accept as admissible into evidence such evidence?

A Yes. That's quite true, and I think that was very rightly put on by Mr. Landry himself.

If authority for that be needed I have brought with me at least the references to the two cases that are most commonly quoted in Canadian juris prudence to establish that. The first one is the English case of Caruma vs. The Queen, which is a case of the privet counsel, of course, at that time the highest authority in the British Commonwealth, and this -- the reference I notice is in the opinion of Mr. Maranda, which I had the opportunity to read before I came here. The other one, which is in Canadian juris prudence and refers to that is the case of the Attorney General of Quebec vs. Bijon. This is the case of the Supreme Court of Canada and it is quite clear that the Supreme Court of Canada has adopted for Canada, the position taken by the privet

counsel in the case of Caruma, and this case of -- and this Canadian case is reported in the Criminal Reports Volume 21 Page 217.

Q Now, beyond the fact --

A I have noticed that the Attorney General of Quebec vs. Bijon is quoted in almost all the cases that were cited by Mr. Landry and that probably will have to be cited by me, because we studied apparently exactly the same juris prudence.

THE COURT: You are talking about private counsel. Are you saying that under the facts of that case the telephone of counsel was tapped?

THE WITNESS: No. But I say, the Attorney General of Canada vs. -- of Quebec vs. Bijon is the authority in Canada to say that it doesn't matter whether evidence has been obtained legally or illegally. What does matter is its pertinence.

THE COURT: That seems to be a point of agreement between you and Mr. Landry, no question about that.

THE WITNESS: Yes.

THE COURT: Why did you refer to private counsel? Did you say under the facts of one of the cases the telephone wire of counsel was wiretapped?

THE WITNESS: No, I don't think I have used the

word counsel.

THE COURT: I misunderstood you.

THE WITNESS: This case, Bijon, is quoted in almost all the cases that have been quoted by Mr. Landry, which to me is a good indication that this was one of the reasons to accept wiretapping as of then because it did not matter whether it was obtained legally or illegally.

THE COURT: The Courts have rarely reached the question as to whether it was legal or not, but they reached the question it was just dictum?

THE WITNESS: Yes.

THE COURT: All right.

THE WITNESS: We will probably go over that later.

Q May I suggest that I heard the same thing that the Court did, but I think that is privet counsel, which is the highest --

THE WITNESS: Sorry, when I was speaking --

THE COURT: I thought you said private counsel.

THE WITNESS: It was the privet counsel, you are right.

Q Now, in connection with, however, in your investigation, your determination -- withdrawn. Your study

of the question, have you made a decision or have you an opinion with a reasonable degree of legal certitude as to the question of whether or not in fact wiretapping was legal and lawful in Canada prior to June 30, 1974?

A Yes. That is the first distinction to be made, it is prior to 30th of June, 1974. But I am in agreement with Mr. Landry on this, it is very hard in Canadian law to speak of wiretapping and to say whether it is legal or not.

My opinion, as I expressed it in 1973, and which is still my opinion here, is that wiretapping of private telephones by police officers was almost impossible to make or to do without breaking certain laws.

It is not the wire -- so much the wiretapping as such that is illegal, although that is my opinion and I will explain why, but it is the fact that to wiretap conversations, to obtain evidence, not necessarily to search evidence, will necessarily lead the officer to make some illegal acts that I think they should not make, even if they are little infractions to Provincial laws, I don't think this is the type of risk that a police officer should take, whether it will be admissible or not.

THE COURT: Can you tell us whether you have an opinion as to whether a policeman in the performance

of his duty, destroys or damages the insulation of wire, whether that violates any law?

THE WITNESS: I would think that that clearly violates Section 387 of the Criminal Code of Canada and I think the correct interpretation to be given to guilty mind is -- and I think this is the interpretation that has been given in all of English and Canadian juris prudence, that the guilty mind is the intention to do what the statute prohibits.

It does not matter if the person in doing that has a good or a bad intention, if the person has the intention to do what the statutes prohibits it does have the guilty mind necessary to bring any criminal --

THE COURT: Our law distinguishes between motive and mens rea.

THE WITNESS: Exactly. That is I think the distinction that is made throughout our juris prudence.

THE COURT: The criminal intent is a voluntary act knowing it is wrongful. Motive and purpose are irrelevant when we talk about criminal intent. Is that your interpretation of Canadian criminal intent?

THE WITNESS: Almost completely, with that restriction that it does not matter whether the

person knows that it is illegal or not.

I think it is Section 17 of the Criminal Code of Canada that provides probably what you have in the United States, that ignorance is no excuse.

THE COURT: Criminal intent does not mean that the defendant must know the specific law that is violated, he just has to know it is wrong to do it.

THE WITNESS: No. He must be able to appreciate that it is wrong to do it. It doesn't matter if he knows that the law prohibits it or not. If he does, if he wants to do what the statute prohibits, then he has a guilty mind, whether he knows it is illegal or not, that is restriction.

THE COURT: We might part company then.

BY MR. IANNUZZI:

Q In other words, sir, is it your opinion that the person need have only the intent to commit a particular act?

A Exactly.

Q Regardless of whether he is aware of its illegality, he has the intention to commit that act?

A That is quite obvious.

Q And therefore that would be sufficient to have a culpable intent under the law of Canada?

A Yes.

Q Did you give --

THE COURT: In other words, you are saying all that is required to show that a police officer is committing a wrongful act is knowing that he intends to put the connection through the insulation and it is not necessary to prove that when he does that he knows it is wrong, a violation of law to do it?

THE WITNESS: No. The only thing that is necessary is that he knows that he is damaging the insulation.

THE COURT: That's all.

THE WITNESS: Yes.

THE COURT: It is?

THE WITNESS: There is other way in which it is legal as well.

For example, the first way I think wiretapping is illegal, and this I know is disputed, but I would like to give it anyway and we can appreciate the dispute after that, the first way is that to me it clearly violates Section 25 of the Bell Telephone Company Act which is a statute of Canada published -- which is Chapter 66 of the Statute of Canada, 18 -- no, Chapter 67.

Section 25 clearly says any person who shall wilfully or maliciously injure, molest or destroy any of the lines, posts or other material or property of the Company, or in any way wilfully obstruct or interferes with the working of the said telephone line, or intercepts any message transmitted thereon, shall be guilty of a misdemeanor.

I didn't bring it with me, but I remember the French translation was "deux mini", to misdemeanor, although it was put in brackets misdemeanor in English.

It is interesting to ask after that if misdemeanor is some kind of infraction, because I note that there is one case where the judge says it isn't, but to me it is an isolated case because we have in Canada, when we are in doubt, the law of interpretation, and the law of interpretation in Section 27 clearly says that any infraction that is not a criminal act is an infraction punishable in summary conviction -- if I can find the reference I'll give it to you.

THE COURT: Is such an infraction punishable by a jail term?

THE WITNESS: Yes, it is punishable by imprisonment of not more than six months and a fine of not more than $500, and in default an additional six months or

both.

Q In other words, a summary conviction that you have mentioned, is it similar to what we would consider a misdemeanor?

A Yes, and I think also --

THE COURT: In our Federal Criminal Law it is called a petty offense. We have three classifications.

Q Or a petty offense?

A Now that I have found my quotation I can read Section 27 of the Interpretation Act which is actually Chapter I 23 of the revised statute of Canada of 1970.

That section reads as follows:

"Where an enactment creates an offense, the offense shall be deemed to be one for which the offender is punishable on summary conviction if there is nothing in the context to indicate that the offense is an indictable offense."

Paragraph two of that section says that "All the provisions of the Criminal Code relating to indictable offenses apply to indictable offenses created by an enactment, and all the provisions of the criminal code relating to summary conviction offenses apply to all other offenses created by an enactment, except to the extent that the enactment otherwise provides."

So my reasoning is that since the Bell Telephone

Company does not provide for anyway to prosecute that infraction, that infraction is punishable on summary conviction and the section of the criminal code that applies to summary conviction applies as well.

This is where you are going to find the penalty, in Part 24 of the Criminal Code of Canada.

Q Sir, is a policeman subject to the Bell Telephone Act and subject to summary convictions by attempting to wiretap?

A Well, if he does one of the things that is prohibited by Section 25, to me he clearly violates the statute and therefore commits an offense punishable on summary conviction.

Q Is there any law in Canada which permits a policeman acting under his authority to violate that act or authorize him to intercept or surveil electronic tele communications?

A I don't know of any, and I think that if there was any Mr. Landry would certainly have put them before you.

I know the reasoning in advance of Mr. Landry and I can explain why I disagree.

I think we can start from something that is really undisputed between ourselves. It is illegal for anybody in the Province of Quebec to contravene Section 25 of

the Quebec Telephone Act, and I think that was very clearly decided by the Appeal Court of Ontario on similar provision of the ONtario Telephone Act.

So the questions where we are in dispute is what does mean "lawfully authorized or directed to do so."

Now, my contention is that "lawfully authorized or directed to do so" means that there is law giving to the police officer the legal authority to direct wiretapping or to direct, I should say, the listening and the divulging of the information, and if there is no law it can't be said that it is lawfully authorized.

This is why, actually, I bring another case -- maybe I present my argument in not the best of orders, but this is exactly the problem that I have asked myself: Could we consider that because a police officer has the duty to investigate crimes he may do what other citizens cannot do only on that ground, because he must investigate crime?

I have found one case that covers that and it is the case of Reginald vs. Ormerod, which is not a judgment of first instance but a judgment of an Appeal Court, and I find it particularly significant that the longest opinion was written by Mr. Justice Laskin, who is today Chief Justice of Canada, when he was sitting in the Appeal Court of Ontario.

Of course it was not in that case a police officer, but that defense was put and that defense was rejected.

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Q When you say that defense, what defense do you refer to, sir?

A Well, the defense that the accused agent of the RCMP or a person honestly believing himself to be such an agent.

Q In other words, as the defense was put in and a policeman has a special authorization?

A Yes, but I must, to be honest, I must say that that person was not a police officer but he thought he was engaged by a police officer to be an undercover agent and as such to traffic in narcotics and illegal drugs for the purpose of gaining the confidence of the people and of obtaining evidence against them, and Mr. Laskin studied his defense as if he were or if he honestly believed he was a police officer.

Now I will give you only those quotations because I can give you the whole case, but he says on Page 10 of the report:

"First, as an agent of the RCMP or a person honestly believing himself to be such an agent, the accused was entitled to the immunity of a member of the force, if such member did what the accused did; and this, either under the Narcotics Control Act and REgulations thereunder or under the common law which allegedly recognizes an excuse for a

police officer where he deals in drugs in the bonafide belief that it is part of his public duty."

Now that was the submission of the defense attorney, and that is what he stated, and he concludes, and that is on that submission --

THE COURT: That includes the statement concerning the immunity he would be entitled to if he were a police officer?

THE WITNESS: Yes, that, that was the submission of the defense attorney and that is what is studied by Mr. Justice Laskin, and he concludes his opinion:

"Where, however, a police agent (the status claimed by the accused) has himself been charged, as a result (I am prepared to assume) of activities bonafide considered to be in furtherance of the police agency, it is impossible to say that he has a defense if his superiors or other members of the police force would not have one if they had been prosecuted for the same activities. It may be unsporting, in such circumstances, to prosecute the lay agent where the police themselves would not be or are not charged; but the Court can probably do no more here to show its disapproval than to reflect it in sentence."

And so what I am saying is that it is undisputed,

after the case of Chapman and Grange, and it is certainly undisputed between Mr. Landry and myself that to listen to a conversation --

THE COURT: What was that defendant convicted of in that case?

THE WITNESS: I think he was convicted to six months in prison, if I remember well.

THE COURT: I mean what was the charge?

THE WITNESS: To have been trafficking in narcotics and some other things that were illegal.

THE COURT: Was he convicted of one of the many statutes you said that would prohibit or stand in the way of wiretap.

THE WITNESS: No, but I have given that as an example of a case where a person pretends that because he was engaged in some public duty, he had the right to break laws that other people could not break.

THE COURT: I heard it differently, I will have to read it.

MR. PUCCIO: Could we have a copy of that made?

THE COURT: Let's make copies.

THE WITNESS: I have only one, I didn't have time to make the others, but I imagine that Mr. Puccio --

THE COURT: From the excerpt you read I think

it is there for the opposite.

THE WITNESS: Well, the first excerpt I gave was the submission of the defense attorney as replayed by Mr. Laskin.

THE COURT: Why would the judge even deal with it if the question were whether he would be entitled to the immunity that he would have had had he been in fact a policeman, why would the Court ever deal with it.

THE WITNESS: Because that was the submission of the accused.

THE COURT: I know, but --

THE WITNESS: And the judge said that this was not an excuse to break the law.

THE COURT: Don't you see if a police officer too would be subject to the same penalties --

THE WITNESS: Yes?

THE COURT: (Continuing) -- and disapproval, why should he even discuss the question as to whether or not he was in fact a policeman, what was the materiality, yet the Court found it important to discuss that point?

THE WITNESS: Yes, exactly.

THE COURT: I have arrived at the opposite

conclusion from what you tell me but I will read the whole case.

THE WITNESS: Well, the conclusion to me is quite clear, and that is that a police officer in the exercise of his duty in investigating crimes must submit to the same laws that other people in Canada do unless there are special provisions that authorize them to act otherwise. For example, there is a special provision in Canadian law to the effect that the powers of arrest are greater for a police officer than they are for another person.

THE COURT: Well, you have had a long time to study it, I have just got the brief. I can certainly read it, I will have to read it, you may be right or I may agree with you when I shall have read it, but that isn't what I got from what you read.

Was that marked?

MR. IANNUZZI: No, sir.

MR. PUCCIO: We have it here.

THE COURT: Please mark it.

MR. IANNUZZI: I will have it marked.

Perhaps we can have Mr. PUccio make copies of this meanwhile so that your Honor can have a copy, or we will make them after court.

THE CLERK: Ten page document marked as Cotroni Exhibit D for identification.

THE COURT: Have you completed, Mr. Iannuzzi?

MR. IANNUZZI: No, no, your Honor, certainly not.

THE WITNESS: Your Honor, I understand why maybe if I can put them in the order that I have prepared them -- your Honor, we have discussed in the other testimony at very lengthy times the case of Regina vs. Chapman and Grange, and I base my opinion also on that judgment, and that judgment, whatever was said by Mr. Landry, well, you can read it for yourself also, but to me clearly it establishes that even in the case of the police officer, they are not -- they must follow the Provincial Regulations --

THE COURT: But he was employed by the trucking outfit in a labor dispute.

THE WITNESS: That is not what I understood from that case, and I have read it many times, and I don't see that in the case of Chapman and Grange, either. It may be the fact in that case that that is not what appears in that case. But in any case, this is why I want to start from the undisputed fact:

The Court of Appeals of Ontario quite clearly

said that those sections are valid legislation, and my conclusion accordingly is that Section 112 of the Telephone Act is valid legislation.

Now Section 25 of the Quebec Telephone Act establishes exactly the same thing as Section 112 of the Ontario Telephone Act, and an agreement to contravene, either in the sense of depriving persons entitled to the protection of his civil rights, which that section gives them, or to contravene the section and to do what is not permitted, that is to have an agreement to effect an unlawful purpose -- and this go on and ends with the words:

"There was evidence to support a conviction against both appellants upon the indictment."

(Continued on next page)

BY MR. IANNUZZI:

Q Now, with reference to Chapman-Grange, did Judge Arnup -- I still have trouble with pronouncing the judge's name -- the judge that made the determination for the Court of Appeals, well, was that a unanimous decision?

A It was a unanimous decision of the Ontario Court of Appeals.

Q In determining the facts, did the Court determine that Chapman was at the relevant time acting as an undercover or plainclothes policeman?

A Well, my impression in reading the parts that you have read and that I have read is that he was acting as a plainclothes policeman at that time.

THE COURT: Do you understand that indictment to mean as "The relevant time" the time that he was on the telephone, that is when he was tapping the wires.

THE WITNESS: Well, that is what I understood when I first read it, and I have nothing else, nothing to tell me otherwise, and I would imagine that when you read it you will have the same impression because it is quite clear on Page 150 when they say, "The Appellant Chapman at the relevant time was a Constable with the Metropolitan Toronto Police Department, acting

in a capacity as a plainclothes detective" --

THE COURT: Is there any statement of fact that indicates that he was in the pay of a trucking outfit?

THE WITNESS: No, the only thing I see that bothers me which was when I was listening to Mr. Landry's opinion is that I have noticed that, too, that Mr. Chapman had bought cassette recorders before, but I don't see how that fact, or from that fact that I must assume that when he bought those cassette recorders he bought them for the accused Grange or that he bought them to carry his purpose as a police officer.

BY MR. IANNUZZI:

Q In any event, sir, is there anything in the decision that indicates the Court was considering Chapman as a private individual as opposed to a policeman?

A No, there is nothing in the case.

Q Is there anything in the case that indicates that a private citizen cannot do the things that Chapman was convicted of but that had he been a policeman he would have been authorized to do?

A No, there is nothing in the case.

Q And on the basis of the facts as put together

by the Court in marshalling the fact before making his decision, was Chapman found guilty of an infraction of the laws of Canada despite the fact that he was a policeman?

A Chapman was found guilty of a criminal act contrary to the criminal code of Canada and in my opinion that was for any police to engage in wiretapping activities, well, that they cannot do it without going to the same kind of agreement that Chapman went and was convicted for, because one point that is in the opinion of Mr. Mareda, and that must be stressed here, and I know Mr. Landry almost completely ignored it until he was cross-examined, is that the criminal code of Canada provides in it Section 423 many ways to be guilty of a criminal conspiracy, and one of those ways is that everyone who interferes with anyone to effect an unlawful purpose, to effect a lawful purpose by unlawful means is guilty of an indictable offense and is liable to imprisonment for two years.

Now, it was decided in Chapman and Grange, and it was decided before that, that an unlawful purpose can be an infraction under Provincial Law, therefore when one or two persons agree together to break a Provincial Law they are committing a criminal act according to the Criminal Code of Canada, and that is what I say, that if police officers agree together to listen to conversations that are not

addressed to them and they divulge the substance, the purpose or the content between themselves, then they are entering an agreement to do exactly what Section 25 prohibits and what Section 25 of the Provincial Law makes an unlawful purpose and which Section 423 of the Criminal Code makes an illegal conspiracy.

THE COURT: What if an undercover agent of the RCMP has in his possession heroin, he just bought it from a narcotic dealer, is he committing a crime.

THE WITNESS: No.

THE COURT: He is in possession of heroin.

THE WITNESS: Yes, but it is not a crime to be in possession of heroin, it is a crime to be in possession of heroin without a lawful excuse, and certainly he has a lawful excuse.

THE COURT: What statute gives him the right to this heroin?

THE WITNESS: The offense created by the Narcotic Control Act provides that it is an offense to be in possession of narcotics without lawful excuse, the proof of which lies --

THE COURT: It says so right in the Criminal Code?

THE WITNESS: No, in the Narcotic Control Law.

The offenses in relation to narcotics are not envisioned in the Criminal Code, they are in the Narcotics Control Law, they are in violation of the criminal law.

THE COURT: What is the lawful excuse for having heroin in your possession, is it to gain evidence?

You are saying that it must be without lawful excuse?

THE WITNESS: Yes, and not only to gain evidence but to bring it to Court.

THE COURT: Isn't that the same law which is the excuse here?

THE WITNESS: I don't see where.

THE COURT: Well, the insulation on the wire appears to obtain evidence, isn't that a lawful excuse, the same as an undercover agent in a heroin transaction?

THE WITNESS: Yes, but the provision prohibiting mischief don't have that, I think they don't have that essential element of doing it without lawful excuse.

THE COURT: You say the Bell Telephone Act or the Canadian Telephone ACt must say, "If without lawful excuse"?

THE WITNESS: The Bell Telephone Act, and I have read it to you, doesn't talk --

THE COURT: Is that the difference?

THE WITNESS: There is that difference but I was trying to make my point on the Provincial Law, the Provincial Law doesn't say without lawful excuse, it says unless directed or lawfully authorized.

THE COURT: Then on the one hand the statute excuses police officers I think but in a much lesser crime of getting evidence by piercing the insulation of a telephone line, and the statute doesn't say that a policeman may obtain evidence in effect by --

THE WITNESS: Well in both cases they don't speak of police officers.

THE COURT: But unless there is a lawful excuse or words to that effect a person is guilty of possessing heroin.

THE WITNESS: Yes, because the words that are creating the offense have those elements.

THE COURT: But the law speaks of a lawful excuse?

THE WITNESS: Anybody who is in possession of narcotics without lawful excuse, the proof is upon him, is committing a crime.

THE COURT: What is so unlawful about possessing heroin, the only excuse is that they are using it for evidence, but it is still heroin.

THE WITNESS: No. I would like to check but if I remember in the last sections of the Narcotic Control Act I think they do provide excuses for police officers engaged in that type of activities, but I was not prepared to answer those questions today.

THE COURT: All right, Mr. Iannuzzi.

(Continued on next page)

BY MR. IANNUZZI:

Q Is it a crime in Canada when a narcotic agent purchases narcotics, the crime for which one might be prosecuted, that is possessing for the purpose of sale or distribution of narcotics, is that a crime in Canada?

A No.

Q Is it a crime merely to possess narcotics?

A It is a crime merely to possess without lawful excuse.

Q Is it necessary to have importation for the purpose of sale or is it just mere possession?

A No, the mere possession without lawful excuse is a crime in Canada.

Q And when the policeman has this under proper authorization, that is to say not to possess it in violation of the law, you are saying that is different than when a policeman intercepts purposely and wilfully to violate the law of the Bell Telephone Act?

In other words what I am saying is when a policeman goes into wiretap, is he in fact intending to violate the particular law?

A That is right.

Q Because the law specifically says he cannot do that?

A Exactly.

Q And would it be your opinion that it would be different in reference to an agent who is purchasing narcotics from a person for the purpose of arresting that person?

A Yes, it is different because the offense is not created in using the same language and it was obviously created in different terms because they were foreseeing those types of problems, the same way that a clerk of the court when in possession of heroin, he cannot be said that he is in possession without lawful excuse.

Q Can a person who has a prescription or who has a pharmaceutical --

THE COURT: Excuse me.

Is it lawful to have the tapes in ones possession of an unlawful wiretap?

THE WITNESS: To have them merely in possession?

THE COURT: Yes.

THE WITNESS: I would imagine so, but then this is clearly said in Chapman and Grange, the person who would have given you the tapes would have divulged them, so he will have committed it, he would have done the other part that is prohibited by the statute which is to listen to and to divulge, but the person who is in possession, that is not a crime.

THE COURT: But then the crime isn't committed until divulgence: right?

THE WITNESS: Exactly.

THE COURT: Then if it comes to divulgence to an American Court it cannot be a Canadian crime?

THE WITNESS: I don't understand.

THE COURT: If the divulgence of the substance of the conversation is the crime, is it a crime when the divulgence comes when it is shown in court.

THE WITNESS: That is one way to divulge, but that way you are authorized to do it by law.

THE COURT: Then it is not a crime?

THE WITNESS: The crime is to do both, the crime is to listen and to divulge.

THE COURT: Either or both in combination?

THE WITNESS: It is both.

THE COURT: The combination?

THE WITNESS: Exactly.

BY MR. IANNUZZI:

Q Would it still, sir, be a crime if one officer divulged it to a fellow officer or a superior person, that is to give the information that was obtained on the wire even if it were to be to a fellow officer, would that be considered divulgence?

A That is what I base my decision on, the decision of Chapman and Grange, and I believe that Mr. Justice Arnup's opinion states that if the tapes were handed to somebody else to be listened to, that was the divulging of the conversation and therefore the infraction of having listened to the conversation -- well, that was not addressed to that person but that the divulging of it was committed when that last action was made.

Q Would it be your opinion, therefore, sir, that handing the tapes that had been recorded to another person for the purpose of that other person to listen is sufficient to create a divulgence pursuant to the Canadian law?

A I think that is the opinion of the Ontario Court of Appeals.

Q And that is the only Appellate decision concerning this issue; is that correct?

A That is right.

Q Except for the other one that you mentioned?

A Yes.

There is another thing we can mention, and that is that the case of Chapman and Grange has come after the case of Copeland and Adamson.

Q Did you take into consideration, sir, in making your determination the fact that the Vice-President of the

Board of Commissioners of the Quebec Police Commission indicated that he did not believe that the Police Commission had the authority to permit wiretapping and he did not nor had anyone of the Police Commissioners ever authorize wiretapping in the Province of Quebec: have you taken that into consideration in determining whether or not there could be lawful authority to wiretap in the Province of Quebec?

A Well, I couldn't take that into consideration because I have learned of that letter only this afternoon when it was produced.

Q Well, would that in any fashion cause you to change your opinion?

A No, but I would like to read it carefully, and then as to the powers of the Police Commission, well, I am not sure that the Police Commission has the power to regulate the obtaining of evidence by every police officer in the Province of Quebec; if they do have those powers, then they obviously have the power to regulate wiretapping if wiretapping was legal. But I don't think that they have those powers.

Q I show you Government's Exhibit 9 in evidence and ask you if that in any fashion alters, changes or supports your opinion concerning whether or not wiretapping could be lawfully authorized in the Province of Quebec.

(The witness then perused the document.)

(Continued on next page)

A Well, from that exhibit it is quite obvious that the vice-president of that commission is of the opinion that he doesn't have the power to regulate wiretapping.

Q And if the Police Commission does not have the power, the authority to regulate or authorize, prohibit or authorize, would that in any fashion enhance or alter your opinion concerning whether or not in Quebec policeman could be lawfully authorized or could wiretap with lawful authority?

A Well, I think the Police Commission doesn't have the power to lawfully authorize the listening of private conversations and the divulging of it, and I don't know of any officers or any commission in the Province of Quebec that has that power --

Q And do you know --

A -- I would imagine that a Court or a Royal Commission may have the power to ask that private conversations listened to be divulged, but that is as far as I will go, and if it is possible to make wiretapping by police to find evidence in that way, which is only to listen but never to divulge to anybody unless you are called in court with the tape, then I would imagine it may be legal that way, but that is the only way I see it can be legally made.

Q Without a Royal Commission, would your opinion be that policeman in the Province of Quebec cannot lawfully

wiretap or violate particular sections that you have referred to today?

A Well, I imagine your question refers also to the Quebec Telephone Act because there are many laws involved in wiretapping, there is the Bell Telephone Act which is a Federal Statute, there is the Quebec Telephone Act, there is the Criminal Code of Canada, but if you are referring to the Quebec Province Telephone Act I don't see anybody in the Province that has the power to lawfully authorize or direct to divulge private conversation other than a Court of Justice or a Royal Commission that has the power of a Court of Justice.

Q Is it your opinion, then, sir, that prior to June 30, 1974 wiretapping and eavesdropping by telephonic surveillance was illegal?

A Not for eavesdropping.

Q Telephonic surveillance, that is to say interception of tele communication?

A I have always understood the word "eavesdropping" as the fact that you deposit a piece of electronic equipment in a room and then through that piece of electronic equipment you hear when you are outside of the room or you register the conversation that was held in the room; this I think was legal in Canada before the 30th of June, 1974, it is now legal

only if it authorized in the manner provided by the Criminal Code.

Q Let me rephrase the question to say --

A But that is for eavesdropping, not the listening of private conversation.

Q Well, let me ask the question this way:

Is it your opinion that prior to June 30th, 1974 interception of tele communication and interference with service, telephone service was illegal?

A Yes, all those activities were illegal and I think still are.

Q Is it your opinion that after July 1st, 1974 they are also still illegal?

A They are still, yes, but there are provisions now in the Criminal Code to permit the police in certain circumstances to obtain the authorization of a judge.

Q Would it be your opinion sir, that the change is not the substantive law of Canada but the procedure through and by which this evidence might be obtained?

A No, I would say more than that, the new section of the Criminal Code in 176.1 until 176.22 has created new offenses which were not in the Code before as eavesdropping in particular, and I think they have provided a way for a police officer to be authorized to listen to private telephone

conversation and to divulge same, which they didn't have before, but only as to telephone conversations, a private telephone conversation.

MR. IANNUZZI: I have no further questions at this time, sir.

THE COURT: Mr. Klar, do you have any questions?

MR. KLAR: Just a couple of questions.

CROSS-EXAMINATION

BY MR. KLAR:

Q Are you familiar with the Police Act of the Province of Quebec enacted in 1968?

A Yes, I am.

Q Are you then familiar with that act and does that act not contain, as I stated before, any provision conferring on any provisional Government officer, police officer or any other person the right to wiretap or the authority to use such wiretapping?

A That is right, and it doesn't provide any authority to lawfully authorize to break Provincial Laws.

Q Therefor is it not correct, then, that a police officer or a Government official or a Provincial official would not have the power, in the absence of any law, to confer upon himself the right to grant such authorization for wiretapping?

A Yes.

Q And that if such officer or official did confer unto himself or another the power or the authority to wire-tap, he would be in violation of Section 423, which would be conspiring to do an unlawful act to accomplish an unlawful purpose; is that not correct?

A That is correct, yes, with the restrictions I have put before.

Q Yes, and that --

A If you can find a way to listen to private conversation and not to divulge them to anybody before you go to court, maybe that is legal.

Q But assuming under the circumstances here where in fact there is a divulgence either to --

A I don't know the circumstances here.

Q Well, assuming there is a divulgence to a fellow police officer or to a superior police officer, would that be a violation and therefore a crime under Section 423 of the Criminal Code?

A It will be in violation of the Provincial Law and it will be a crime according to Section 423 of the Criminal Code if there was an agreement to do what is prohibited by the Provincial Law.

I hope you understand that Section 423

of the Criminal Code provides that such an agreement to effect an unlawful purpose is a criminal act, and unlawful purpose being an infraction envisioned by Provincial Law.

MR. KLAR: I have no further questions.

THE COURT: Do you have any questions Mr. Rosenthal?

MR. ROSENTHAL: No, your Honor, I have no questions.

THE COURT: We will take a five minute recess.

(A five minute recess was then taken.)

(Continued on next page)

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(After recess)

MM THE COURT: This case will continue Monday, Tuesday, Wednesday, Thursday, Friday, and if necessary, Saturday.

I will repeat what I said before: This trial will start Monday.

MR. IANNUZZI: Are we going to discontinue for today?

THE COURT: We will complete the witness unless he can come back Monday, and he said no.

Well, Mr. Puccio indicated --

MR. PUCCIO: I would just as soon finish today.

THE COURT: All right, please resume.

S E R G E M E N A R D, resumed the stand and testified further as follows:

CROSS EXAMINATION (CONTINUED)

BY MR. PUCCIO:

Q Now, Mr. Menard, you were retained by defense counsel to appear here today; is that correct?

A Well, I was contacted --

Q Are you being paid to testify here today by defense counsel?

A We entered into an agreement, yes, that I will be --

THE COURT: Recompensed, paid, reimbursed?

THE WITNESS: Reimbursed of my expenses.

Q I believe you testified you were on Mr. Landay's staff at one time in the Department of Justice.

A Yes.

Q For how long a period of time did you work for him?

A From August '67, or maybe July of '67, until February '68.

Q And did Mr. Landay participate in training you for your job at all?

Did you receive any instructions from Mr. Landay while a member of his staff?

A He was my superior, so I certainly received instructions from him.

Q Is it your position that as a matter of general principle in Canada a thing is unlawful unless there is a specific statute allowing a thing to be done?

A No.

Q In other words, that something is not merely unlawful just because there is no statute making it lawful; is that correct?

A My position is that it is -- that what is unlawful for private citizens is also unlawful for a police

officer unless there is a specific provision in the law providing they can do otherwise.

Q In the situation where the Parliament has not passed an act or a statute regulating certain conduct, is it your position that that conduct is unlawful, if the Parliament has perhaps been silent on that particular thing?

A No, it is not my position; if it was it would be wrong, because I know many cases that said exactly the contrary.

Q Are you familiar with the general terms, with the wire tap evidence which the Government is seeking to introduce in this criminal case?

A No. I know very vaguely of the facts in this case. I don't know the accused until this morning.

Q You do know there are certain telephone conversations which were intercepted, or wiretaps by the Quebec Police Force introduced into evidence here?

A I know that much, yes.

Q It is your position that if this evidence was sought to be introduced in Canada at the present time it would be perfectly admissible in Canada?

A I wouldn't go that far, but I would say it was certainly admissible before the 30th of June of '74.

Q You are aware that there are cases where, if

wire tapping was done before the passage of private detection--well, the Privacy Act -- it is not governed by the protection of --

A I know of two such instances and decisions.

Q Do you agree with those decisions?

A I don't agree with them. One is basing itself on the other.

The first one is basing itself on Copeland and Adamson.

Q I take it you don't agree with either of the decisions in their entirety?

A I hope we are speaking of the same decision, the decision of LeSarge and I am speaking of the other decision, DesJardins and Sureau.

THE COURT: What is there in the protection of the privacy act that renders inadmissible evidence that was admissible prior to July 1 of 1974?

THE WITNESS: I think that Section 178.16 of the Criminal Code could be interpreted that way, but I have not given that much thought to that, and this is why I wanted to restrict my opinion to the fact that it was in my opinion admissible before the 30th of June of '74, because at that time whether it was evidence obtained by wiretapping or any other means,

whether legal or illegal evidence was admissible if it was pertinent or material --

Q Is it fair to say you have no considered opinion as to whether it is admissible now?

A Now I would certainly have given the same thoughts that the law of Mr. DesJardins and Sureau to Section 176 or 178.16 that says any evidence obtained by wire tapping is not admissible if it was not lawfully -- and I would like to put "lawfully" in brackets -- if it was not lawfully obtained.

THE COURT: Doesn't "lawfully" refer to provisions of the Protection of Privacy Act?

THE WITNESS: That is the opinion expressed there, but I would like to give more thought if the word "lawfully" does not include any law.

Q I understood you to say during your direct testimony that as a general principle in Canadian law something could be admissible, evidence could be admissible, even though it was illegally obtained.

A Yes, that is the general rule, to which there is some exceptions.

Q What are the exceptions?

A I know of at least two.

Q What are they?

A I know the new one provided by that Section 178.16, and there is also the rules concerning the admissibility of statements made by the accused outside of court.

Q Are you saying that the protection of privacy act which was passed or actually came into effect, rather, on June 30th of 1974 is retroactive in that any wiretapping conducted before the Act was in existence is subject to the Act as far as admissibility into evidence is concerned?

A It is certainly not retroactive, but what I said is that I want to limit my opinion as to the admissibility of evidence obtained by wire tapping, to wiretapping made before the 30th of June of '74, because I still wonder what the term "lawfully" means in Section 178.16.

If a Judge is convinced that evidence was obtained by wiretapping prior to the period June 1974, by illegal means, I think it would be open for many, maybe to decide that it was not lawfully obtained and therefore it isn't admissible. I don't think this is the present case.

Q You are not ready to render an opinion on that point?

A I am not ready to bind myself as to what happened after June 30th of '74.

Q You realize there are two judges in Canada who have already rendered an opinion on that point, one judge

in Her Majesty v. Martin Roy LeSarge, Barton LeSarge, and another judge in Her Majesty the Queen v. Andre DesJardins, both of those judges, that being Judge Martin in the LeSarge matter, and Judge Bison in the DesJardins matter, both those judges have found that the privacy act does not pertain to wiretapping prior to June 30th of 1974. Two judges have held that. Are you aware of that?

A Of what?

Q They have held that the protection of privacy act which went into effect on June 30th of '74 does not affect wiretapping conducted before that date.

A The way you phrase your question, it is hard to answer you exactly.

THE COURT: Let us understand this: Are you aware of those decisions?

THE WITNESS: Yes, and I have read them.

THE COURT: Do you disagree with those decisions?

THE WITNESS: At first glance, yes, and I doubt if they were carried in appeal if they will be maintained.

Q Do not tell us what is going to happen on appeal.

Do you agree with those decisions or do you disagree?

disagree?

A I disagree with the statements made in those decisions.

Q Do you disagree with the holding in Barton Roy LeSarge and Her Majesty the Queen against Des Jardins?

A Both of those cases I am more in a state of not insecurity, but indecision.

Q Let me read from here. This is a quote from Her Majesty v. LeSarge --

'THE COURT: I don't think that will serve any useful purpose.

MR. PUCCIO: All right. I will go on to something else.

Q Let me turn to the Regina v. Chapman and Grange, which you quoted as supporting your thesis.

A No, I am basing my thesis on that partly.

Q This is an Appellate decision.

A Yes.

Q And it is in the Ontario Court of Appeals.

A Right.

Q What is your understanding of the charges in this particular case?

A The indictment was for conspiracy to effect an unlawful purpose, that unlawful purpose being an offense

under the provincial law.

Q What offense was that?

A The offense was invasion by Section 112 of the Ontario Telegraph and Telephone Act, which section is similar to Section 25 of the Quebec Telephone & Telegraph Act.

Q Who were the defendants who were accused in this particular case?

A It was Chapman and Grange.

THE COURT: What were their titles?

One owned a trucking company?

THE WITNESS: Grange was owner of a trucking company, and Chapman was, well, no, Grange was not the owner of the trucking company. His company was called Canadian Driving Pool. He had a company that provided drivers which will not be scared by picket lines, and not to provide trucks.

Chapman was a police officer.

From what I understand, from what he read in that case, he was engaged as a police officer in plain clothes.

THE COURT: He was assigned by his superior to engaged in plainclothes activity and in Grange's plant?

THE WITNESS: The case doesn't say it that

clearly. This is what he deducted from what I read in that case.

THE COURT: That is what you assumed in basing your opinion on that case?

THE WITNESS: Yes, and on quotations that I have given earlier.

Q Do you realize in this case, Chapman and Grange, Chapman -- I am quoting, Grange stands charged that during a given period that the municipality of Toronto and elsewhere they conspired together, one with the other, and with Canadian Driving Pool and drivers' agents of Canadian Drivers Pool, Ltd. to effect an unlawful purpose, that is page 149.

Any one of the aforesaid, Barry Chapman, Richard Grange, Canadian Drivers Pool, Ltd., agents thereof having a prior knowledge of conversation or messages passing over telephone lines located at or near 363 Broadview Avenue, Toronto, and not addressed or intended for them to divulge the purport or substance of the conversation or messages to any one or more of their number of agents or any other persons not lawfully authorized as directed to do so under the criminal code.

Are you aware those are the criminal charges?

A Yes.

Q Are you also aware that Mr. Grange owned a company which provided a service to employers, that is, giving them access to information pertaining to labor unions, and in that capacity he and Mr. Chapman do some wiretapping. Are you aware of that?

A I have read the decision, yes.

THE COURT: That Grange ordered Chapman to do the wiretapping?

THE WITNESS: That is not what I understood from the decision.

MR. IANNUZZI: May we have the witness finish the answer before we have another question posed, because we have two voices going at the same time, and I cannot get it, and I don't know if the reporter is getting it.

THE COURT: Well, Mr. Miele is quite definite in his reporting, and if he does not get it, he will let you know pretty quickly.

MR. IANNUZZI: I can't hear the bulk of them at the same time.

(Continued on the next page.)

BY MR. PUCCIO:

Q Well, you also were aware, Mr. Menard, that the judge, the appellate judge in Chapman and Grange quoted the trial court, and on page 152 the trial court is quoted as saying: "I am satisfied that the recording device found at the base of the wall, found by Marr, was owned by Grange or Canadian Driver Pool, and was placed there on the instructions of Grange, probably by Chapman."

Are you aware that that was one of the findings of the trial court in Regina v. Chapman and Grange?

A Yes, I remember that.

Q Are you seriously contending, Mr. Menard, that this electronic surveillance, or this wiretapping that was conducted in this case was conducted by the Police Department of Ontario, and that Mr. Chapman was acting as a police officer conducting this surveillance?

A That's what I understand from other parts of the decision.

THE COURT: What crime was he investigating? He was tapping the union wires, was it?

THE WITNESS: Yes. It is said that the Red Path Sugar Company, which was on strike at that time, called the police many times -- I tell you this from memory, but if I can put my hand on my copy of that

case I can give you the exact wordings of the decision --

Q Let me ask you this, Mr. Menard --

A From what I remember, it is the second paragraph on page 150. I think you have my decision -- my copy.

The second paragraph on page 150 on the 7th line of the 2nd paragraph it says --

Q Which page?

A 150. It says: "Considerable damage was caused to the property of that company and it requested the assistance of the police on numerous occasions."

THE COURT: That is Red Path, you mean?

THE WITNESS: Yes. So there is why I understood when I first read Chapman and Grange, and I still think that maybe the facts were different for people that know the parties, but from what I read here I understand that Chapman was one of the plainclothes detectives that was assigned to the protection of the property of Red Path because the considerable damage was done there and Red Path Company had called the police to help them.

As in many other cases which I have witnessed before, the police officers were working in conjunction with some private detectives, employed by the

company.

Q Let me ask you this, Mr. Menard --

A And this is why it didn't surprise me at all that a police officer of the Toronto Police force will use equipment owned by a private detective company.

Q Let me ask you this, Mr. Menard: What crime was Chapman investigating when he conducted this wiretapping as a member of the Police Department, as you suggest?

MR. IANNUZZI: If your Honor please, I think that this --

THE COURT: Wait now. I want the expert -- It is a question directed to the expert.

I think the expert should tell us whether he understands the question or not.

THE WITNESS: I understand the question.

MR. IANNUZZI: The record speaks for itself. That is what I was about to say.

THE COURT: The expert expressed an opinion based on this opinion. The opinion is based on facts. If the facts are different than this expert understood, then his opinion is valueless.

Q Can you answer that question?

A Yes, I can answer that question. I think that in that case, at least that is what I understood from the case, Mr.

Chapman was trying to know if crimes were planned by the members of the union, and if he would have some leads in listening to their private conversation about crimes that they were planning to do, and therefore, he was investigating possible conspiracy.

Q Conspiracy to violate what law?

A The Criminal Code of Canada, or any other law, but more particularly, in the case of strike, the provisions of the Criminal Code that forbid intimidation of persons and--

Q What section is that?

A -- and mischief.

Q What section is that?

A Intimidation, I don't remember, although I can find it if I have time to look in the agenda, but mischief is 387, Section 387.

Q Don't you think, Mr. Menard, that the judge who wrote the opinion in Chapman and Grange, in that case would have said in his opinion that Mr. Chapman was acting as a police officer investigating a particular crime, if that in fact is what was happening?

A Well, it was quite obvious that Mr. Chapman was listening to telephone conversation, not to investigate crimes that had been committed, but to know in advance if crimes were planned.

Q Let me quote from page 151. It says: "It was proved that Grange in September 1971 had purchased, inter alia, four 'Steintron' cassette recorders, and in August 1971 two 'Realistic' recorders, and a further 'Realistic' on October 1, 1971. It was also proved that the appellant Chapman was acquainted with the appellant Grange and had been in contact with him several times during the relevant period. Chapman had been seen in the company of Grange at Grange's apartment by an employee of Grange, who gave evidence and who testified that on one occasion, about the middle of August 1971, the witness was with Grange at Grange's residence when a tape was played on a cassette recorder of a telephone conversation between two people, at the end of which Grange remarked that 'This would keep the company ahead of the unions as far as knowing what would be happening.' (This incident obviously did not relate to the Red Path Sugars strike which had not yet started.)"

Isn't it clear that what was going on here was that Chapman was employed by Grange to gain intelligence for a company about what a labor union was contemplating?

A That may be so, but --

Q All right.

A -- but Section -- but the first paragraph of page 150 made me believe that he was -- that Chapman was

doing all that with Grange in his capacity as a police officer.

Q Then wouldn't other people in the Police Department in Toronto have been involved along with Chapman?

A I think there was --

MR. IANNUZZI: We cannot now go behind the facts that are in the opinion to determine what the record in Canada says or what people in Canada knew.

We are bound by the four corners of the decisions.

(Continued on the next page.)

2 pm

THE COURT: I know, but I think this is proper cross-examination as to whether this witness properly assumed the facts stated in the record.

MR. IANNUZZI: But, if your Honor please, we are now being asked about what people in Canada might have thought. That isn't --

THE COURT: I will allow it as proper cross-examination.

Wouldn't you expect that, that other people in the Police Department would be cited either as defendants or at least in the record if this were police work?

THE WITNESS: That is not the question that I understood.

THE COURT: Isn't that the question?

THE WITNESS: That were involved with him. I think it is quite clear from the facts that one other police officer was involved, if I well remember, Sergeant MacDonald.

Q Are you aware that when Chapman was arrested he displayed a badge and indicated he was a police officer and he wasn't believed at that point?

A Yes.

THE COURT: At any rate, Mr. Menard, if you

misinterpreted the facts, if the facts indicate that Mr. Chapman, though a police officer, was not acting pursuant to any orders or directions of any superior, that he was not performing any duties as a police officer but was acting solely and strictly as an employee, and at the behest of Mr. Grange, would that change your opinion as to the interpretation of this case?

THE WITNESS: No, my Lord, and this is what I tried to explain many times in the course of my direct examination.

When I said let's start from the undisputed opinions, where we are -- where Mr. Landry and I are completely in agreement, I am sure we are both in agreement that in general it is a criminal act to agree to do what a provincial law prohibits you to do, and that so it is illegal for any citizen in Canada to -- any citizens in Quebec, and it is a criminal conspiracy for any citizens in Quebec to agree to listen to conversation, private conversation, telephone conversations that are not addressed to them, and to divulge the same unless they are lawfully authorized or directed to do so.

The next question has to be asked is, When are

they lawfully authorized or directed to do so?

My opinion -- and it seems that on that point Mr. Landry has a different opinion, and this is why I have brought to you the case of Oramand -- my opinion is that lawfully authorized or directed to do so, suppose that there is a law giving that power to the person who authorized that, and I don't know of anybody in Quebec other than a court of justice by the way of subpoena that can lawfully authorize a person to divulge a private conversation that was not a private telephone conversation that was addressed to that person.

BY MR. PUCCIO:

Q Let me quote again from the opinion of Regina and Grange, and again the appellate court quotes the trial court, on page 151, the second paragraph from the bottom:

"One of the activities in which Grange indulged and which assisted him in giving service to his customers (in this case Red Path) was to obtain and act upon information which would keep himself and Canadian Driver Pool"-- and I am quoting -- 'ahead of the unions.'

"I am satisfied on the evidence that some of this information would be and was obtained through the interception of telephone messages passing over the telephone

lines of unions, and more particularly, the telephone line of Local 688, located at 363 Broadview Avenue. In this sense the content of the message would be divulged."

Isn't it clear, Mr. Menard, that what was going on here was not an investigation by the Police Department or a police officer acting under the authority of the Police Department, but rather a separate venture, a private venture by a person who happened to be a policeman, in connection with gathering intelligence for a company that was interested in what was going on in the labor union?

A No, I don't think it is that clear, and I'll tell you why --

THE COURT: That is an answer.

Anything further, Mr. PUccio?

How much longer do you intend to be?

MR. PUCCIO: A couple of more minutes, your Honor.

THE COURT: Go ahead.

BY MR.PUCCIO:

Q You indicated that eavesdropping was always legal and was never illegal in Canada; is that correct?

A In the case of eavesdropping, it is not the same text that we have mentioned that are in question.

For example, eavesdropping is not envisioned

in the Telegraph and Telephone Company Act, and not in the Bell Telephone Act either. There remains a question whether eavesdropping would be an infringement to rights for peaceful enjoyment of property as given to any Canadian citizen in the Canadian Bill of Rights.

THE COURT: How about putting a spike through a wall and into someone's bedroom?

THE WITNESS: I think that has been recognized as legal.

THE COURT: That's all right.

Q As legal?

A Yes,

Q How about breaking into an apartment in order to install an electronic bugging device? Is that legal if the Police Department does it?

A It all depends on what they wanted to do with the bugging device. If with the bugging device they want to do what is prohibited by the Quebec Telephone Act, I will say that is illegal.

Q I am talking about in furtherance of an investigation, the Police Department wants to hear what is going on in a particular apartment -- let's say it is a narcotics investigation -- and breaks into that apartment and places an electronic eavesdropping device in that apart-

ment; is that against the law for them to do that?

A No, it is not against the law to do that.

Q However, it is against the law by your interpretation for the Police Department in Canada to clip the insulation around a telephone wire in order to install the wire tap?

A Yes, because there is specific provisions in the law prohibiting to listen to private conversations that are not intended for you and to divulge them later.

I hope you understood the first statement --

Q Is it against the law for the police officers to break a door on an apartment, to destroy property, in order to gain entrance in order to put in an electronic device?

A I realize now how you put your questions, it has been decided before that to put -- that police could use eavesdropping equipment.

Now, in those decisions it was not decided if it was right for them or wrong for them to destroy property in order to do them. My answer must be --

Q They are breaking --

A I understand how you may have got me a wrong answer before because your question was double. I'm sure you did it in good faith --

Q I don't know about that.

A But I don't think you must interpret my answer as saying that police officers can destroy property in furtherance of an investigation.

I don't think police officers can destroy property in furtherance of investigation if they are not lawfully authorized to break that property.

Q Well, there was --

A To do some damage.

Q There is no law in Canada, is there, prior to June 30, 1974, authorizing a police officer to break into an apartment in order to install an electronic eavesdropping device, is there?

A When I answered you a moment ago, my intention was in order to -- but now that you put the problem, is there a law prohibiting the police officer to break a door or to break a lock, I would say that if they are not legally authorized to do so, that is a mischief.

Q In other words, let me ask you --

THE COURT: You are saying that if it is lawful it is all right; if it is unlawful, it isn't.

THE WITNESS: Yes, and there is a way where it is lawful. When they have a search warrant it is lawful, because the law provides that then they

can break and enter and that is to me a lawful authorization, and if there is not a text of law saying that, that they can break and enter, then there is no lawful authorization that can be given by their superior.

I don't think our law is quite different on that than in the United States or England, or, for that matter, even France.

Lawful authorization, I think, means an authorization that is given by persons which gets its power from the law.

THE COURT: We are having trouble only because you start your answer with a supposition, without defining what the supposition is.

Of course, if a police officer may enter an apartment lawfully, then he is not doing anything unlawful; then no one can complain.

If it is unlawful, of course it is unlawful, and someone can complain.

Instead of talking about breaking a door, let's eliminate the damage to the door, let's assume that he gets in by stealth, no damage is done to the door, but he places the bug there -- is that lawful?

THE WITNESS: Then I think, my Lord, this is

not prohibited. This is the distinction I wanted to make, because the reason of the confusion I can explain, my Lord, is that I know very well that to break and enter premises is made a crime only -- in the Criminal Code as such -- only when it has that additional element of intention to commit the criminal act. But to break only is a public mischief.

I can give you another example --

THE COURT: Of course --

THE WITNESS: To illustrate that. Canadian law, as surprising as it may look, it is not the crime of breaking and entering, a criminal act in a car, so when I was a prosecutor and we were in front of a youngster that broke the lock of a car and stole the radio of that car, we would not charge him with breaking and entering in a place other than a dwelling house to commit the crime of theft, we would charge him with committing the crime of theft of that radio and, secondly, we would charge him with the crime of public mischief for the locks he had broken.

THE COURT: We have been bred a little differently here, because we start with constitutional rights and to us the horrifying, unlawful act

is the intrusion.

The mere fact that a door might be broken or a police officer got in my stealth is quite incidental and sometimes immaterial. It is the intrusion into that apartment.

THE WITNESS: Well, in Canada, it is a bit the same thing, because although the crime is called to break and enter, the gist of the crime is to get into a dwelling house or another building other than a dwelling house with the intention of committing a criminal act, and the Criminal Code says very clearly that you commit that crime even if you don't break anything to enter.

But the way Mr. -- I forget his name -- but the way the District Attorney puts the question to me at first, is it legal for a police officer to break into somebody's property and put an eavesdrop in? Now I say if the police officer gains entrance without breaking anything and puts an eavesdropping device, I don't think at that time it is a criminal act because he doesn't have the intention to commit a criminal act, but if to enter the premises he breaks the lock and then puts the eavesdropping, he is not committing the crime of breaking and entering

in a dwelling house with the intent of committing a criminal act, but to my mind he is committing the crime of mischief, because he destroyed private property without lawful authorization.

Q You are saying in the situation where a police officer breaks into a house in order to install an eavesdropping device in furtherance of an investigation, he in effect does not have criminal intent; is that correct?

A That's what I say, unless, as I said before, this eavesdropping -- this electronic device is designed to listen to telephone conversations that are not intended to him, and to divulge them later.

(Continued on the next apge.)

/1 pm

THE COURT: Suppose he breaks into a house, into an apartment, to arrest someone, is that a lawful breaking? He breaks the door.

THE WITNESS: To effect an arrest?

THE COURT: Yes.

THE WITNESS: Yes, I think he is authorized by law at that time to do it.

THE COURT: Because it is a part of his duty?

THE WITNESS: I think there is a recent case in the Supreme Court to that effect.

THE COURT: Suppose he breaks in the door to put a bug in the apartment?

THE WITNESS: If he breaks something?

THE COURT: Yes, yes.

THE WITNESS: Well, if he has no warrant, no search warrant, I think he has committed the crime of mischief.

BY MR. PUCCIO:

Q How about if he breaks in in order to install an electronic eavesdropping device; is that against the law?

A Which, the breaking?

Q Yes.

A If he breaks --

Q The breaking in in furtherance of his desire to install an electronic eavesdropping device in the apart-

ment, is that against the law?

A If he breaks something, if he is breaking --

Q Well, if he breaks a lock on a door in order to gain entrance to the apartment to install an electronic eavesdropping device, which you already said is legal --

MR. IANNUZZI: Your Honor, I think that --

A It is the breaking that is illegal.

Q In other words, in order to do something legally, he has to do something illegal. Is that what you are saying?

A That is not what I am saying, I am saying just the contrary, in order to do something legal he is doing something illegal, and that is not a lawful authorization, to do something illegal, and that is exactly the gist of my argument.

Q Where does he obtain the authority to legally break into an apartment in order to install the eavesdropping device?

A Well, he cannot obtain lawful authority to do that.

Q He can never do that?

A That is not what I said. I said he can --

Q You say he can never obtain authority to break into an apartment in order to install an eavesdropping

device?

A No, he cannot do that, and I have with me some cases where police officers have entered with warrants to drop eavesdropping devices, but they have obtained their search warrants under other representations than that, so it is quite obvious in those cases that the police officers knew themselves that they could not obtain a warrant for that purpose, which was to drop an eavesdropping device, so they had to secure a warrant, and alleging that their breaking would permit them to seize something, then that could be dropped, to prove that the person was holding a betting house.

Q And if they did do it legally, it would be legal for them to install the eavesdropping device?

A It is not illegal.

Q It is legal, I said, if they have --

A If it is not illegal, then it is legal.

Q Are you familiar with a commentator named Trimmers, Trimmers?

A Yes.

Q And in Chapter 9 of his treatise --

THE COURT: Is he a recognized authority?

THE WITNESS: He is a recognized authority in Canada, yes.

MR. PUCCIO: All right.

Q Now, he defines the elements of the offense of mischief as follows, he says:

"The offense of mischief can be committed only when the offender destroys or damages something with a malicious and criminal intention to cause damage and without color of right."

Actually, he takes that from a reported case of Martin v. Bertrand.

Now, do you agree with that proposition?

A Yes.

THE COURT: What is malicious destruction?

THE WITNESS: Well, to damage property without color of right.

THE COURT: Isn't it without just cause?

THE WITNESS: Yes, and without just cause.

THE COURT: Well, when a police officer is conducting an investigation and destroys property, is that malicious?

THE WITNESS: I think so.

THE COURT: Does he ever have just cause?

THE WITNESS: It is not because he is conducting an investigation that he can do anything that would be illegal for some other citizens.

BY MR. PUCCIO:

Q Now, Mr. Menard, I have a few final questions: Your opinion is that wiretapping violates Section 25 of the Bell Telephone Act; is that correct?

A No, my opinion, as I stated at the beginning, is that I don't see how it is possible to conduct wire-tapping activities without -- without infringing or without-- let me say --

Q Violating?

A Without violating some laws.

Q The Bell Telephone Act?

A I don't see how it is possible to do it. Well, if it is possible, that is fine, but I mean as soon as you enter an agreement --

Q Your assumption is that you can't wiretap without violating the Bell Telephone Act; is that correct?

A Or some other law.

Q All right.

Well, let us take the Bell Telephone Act, that says:

"Any person who shall willfully or maliciously injure" -- and this is Section 25 I am quoting from -- "molest or destroy any of the lines, posts or other materials or property of the company" -- meaning the Bell Telephone

Company -- "or in any way willfully obstruct or interfere with the working of said telephone lines, or intercept any message transmitted thereon, shall be guilty of a misdemeanor."

Are you familiar with that section?

A Yes, I quoted it to you. Yes, and if I remember the term "maliciously" is before the term "or intercepts any message transmitted thereon," so I say that it is a misdemeanor to intercept a message transmitted thereon.

But I would like to --

(The witness then perused a document.)

Q What is your definition of the word "intercept" in this particular section of the Bell Telephone Act?

A The definition of the word "intercept" has given rise in the Canadian jurisprudence to at least two known interpretations: the one that was given in Copeland & Adamson and the others --

Q What is your definition of the word "intercept"? What does it mean in the context of Section 25?

Does it mean to prevent a conversation from getting from one location to the other? Or does it mean to overhear a conversation?

A No, personally I don't think that is what it

means. I think the word "interception" in connection with telephone lines rightly describes the action of listening to a message that is not addressed to you, and I am supported in that view in the fact that it seems to be the sense that was given to the word "interception" every time it was used in connection with telephone lines almost throughout the Commonwealth.

I would like to point out to you that for example in Australia the equivalent of our Act --

Q Why don't we stick to Canada --

A (Continuing) -- the protection of privacy act is called the "Interception Act," and it is quite clear that in that context that is what it means, and I would like also to point out to you that although in the decision of Copeland and Adamson, Mr. Justice Grant defined the word "interception" otherwise, but when he used it himself in the decision he used it in that sense.

Q Well, in your definition again is not the same as Judge Martin's definition in Her Majesty the Queen against Barton where Section 25 of the Telephone Act was interpreted as pertaining to wiretapping; is that correct?

A But I think it is the same interpretation that Mr. Justice Moore of the High Court of Ontario in the case of Chapman and Grange, he was the judge of first instance,

and it is also now the definition that is given in Canadian law, and it is also the meaning that is given to that word by Mr. Justice Grant himself when he uses it in the case of Copeland and Adamson.

Q Well, in Copeland v. Adamson, isn't the meaning of the word "intercept," doesn't that mean that messages are being prevented from getting from one location to another?

A That is what I was telling you a moment ago, this is the opinion of Mr. Justice Grant when he gives the definition, but later on, when you read his opinion and he used the words "to intercept," or when he wanted to describe the action of listening to a telephone conversation that is not addressed to you, he uses it himself, the words "to intercept it," so if it is not his definition then apparently there is no other word more aptly designed in the English language to describe this action than the word "intercept."

THE COURT: Why couldn't you use the words "listening in on the conversation"?

THE WITNESS: Maybe I could use it, but it seems that is not the way Mr. Justice Grant uses it.

THE COURT: You said that there were no other words in the English language --

THE WITNESS: No, I say there may be. It may be, but my mother tongue is French.

BY MR. PUCCIO:

Q One final question: Going back to Copeland and Adamson, as far as the technical definition is concerned that the judge gives the word "intercept," isn't that to intercept messages to prevent a conversation from going from one place to another? That is as far as the technical interpretation by the court of the word "intercept" as used in the Bell Telephone Act.

A Yes, that is what he says, but, as I told you, when he wants himself to describe the action of listening to a conversation that is not addressed to the person, he uses it himself, the word "intercept," and I will also add that to me this was not material in the case of Copeland and Adamson, and it was obiter dicta.

THE COURT: If you were to intercept a message or intercept a letter, it wouldn't mean read it, wouldn't mean read it, would it?

THE WITNESS: To intercept?

THE COURT: It would mean to prevent it from being delivered, wouldn't it?

THE WITNESS: I think so. I think that is the definition that is given.

MR. PUCCIO: I have no other questions.

MR. IANNUZZI: About three or four questions. Would that be all right?

THE COURT: Yes, yes.

REDIRECT EXAMINATION

BY MR. IANNUZZI:

Q Sir, at page 4 in the Copeland-Addison case, where the Judge defines the word "intercept," he mentions the determination -- he makes a determination -- well, he indicates:

I don't believe that wiretapping which does not impede the conversation between the parties nor impedes its progress can form a breach of such section.

Now, he does not indicate, or is it your opinion that he requires that the message not get to the place or that it merely be impeded or interfered with?

A I don't know. I am not sure if I understand your question right.

Q I am asking whether or not the interpretation that Judge Grant speaks about means to totally cut off the message, or does it mean merely to interfere with it, even though it does reach its destination?

A I think that is the sense he also gives to it, and he comes to the conclusion that such is not the way it is

envisioned or foreseen --

Q Would it be --

A That is, envisioned by the Toronto Police Force, but my opinion on this is that when -- and I think anybody who reads the case will come to the same conclusion, the Copeland-Adamson case was decided on whether the lawyer that made the application for an order of mandamus had status to make that petition, and when Mr. Grant decided that he doesn't have that stature, then I quite agree with him.

Q Well, if, if, if Mr. Justice Grant found wiretapping which did impede the progress of the message, do you feel that his opinion would be different then? In other words, if he found it was interference with the message?

A Yes, yes, he leads us to believe his opinion will be different then. But as I said, all these questions in Copeland and Adamson are, I think, obiter dicta, because the stare decisis of Copeland and Adamson is whether the lawyer that made the application -- Well, if it were right to order a mandamus or not.

Q May I ask this, sir. Can a policeman in Quebec break down a door merely to enter a premises without a search warrant, and not to effect an arrest?

A Or without a warrant of arrest?

Q Without a warrant of arrest and without a search warrant, can a policeman just break down a door to go inside an apartment at any time he wishes?

A Normally not, but there are some extreme cases where he can, yes, to arrest somebody.

Q But under normal conditions can a policeman just walk up to someone's apartment and kick the door down?

A No.

Q And so if a policeman kicks the door down and puts an eavesdropping device in there, that would be illegal?

A To break the door, yes, to break anything on the door, yes.

Q And as a matter of fact, if he doesn't break anything on the door, is the Canadian law such that it would not be illegal?

A If he doesn't break the door, it will not be illegal, that is, not to break the door.

Q So it wouldn't be any different than if a private person by stealth broke somebody's door and put an eavesdropping device in the apartment?

A The situation of a private person is not different than the one of a police officer, for that matter.

Q And it would therefore be no different from a

policeman than for a civilian in that situation; is that correct?

A Yes, that is correct.

Q And a policeman doesn't have any more authority to violate the law under those circumstances either, does he?

A That is right, but it is true, the Code recognizes more power to police officers than for a private citizen, but the Code must recognize then those powers before the court will decide that he was lawfully authorized to do so.

For example, I have read and paid lots of attention to the cases quoted by Mr. Justice Grant in Copeland and Adamson, and I find now that the cases on which he bases his opinion to say that the police officers have more powers than ordinary citizens are all cases wherein that case there was a specific power recognized to the police officers, as an example, the power to arrest a person who did not identify himself when required to do so, and that person was the driver of a vehicle, and that is the case of Priestman v. Galangilo, that he quotes, and the same case in the case of Mormrod.

Q Therefore, in situations where policemen have more authority than private citizens, there has to be

a specific, special authorization in the law somewhere?

A Yes, that is my opinion.

Q All right. Now, Mr. Puccio asked you in reference to the Chapman-Grange case that the judge in making that decision would have said that Chapman was acting as a police officer if that were the actual case.

Now I ask you would the judge not have said that Chapman was not acting as a policeman if that were the case?

A Well, that was my understanding, and that is why I arrived at the opinion that he was acting as a police officer, although he was acting in conjunction with private citizens employed by the company he was trying to protect.

Q And the only determination of fact as to what Chapman was doing, according to Judge Arnup, that is, in the appeal decision, was that in fact he was acting as the policeman in an undercover capacity or as a plainclothes detective capacity; is that correct?

A That is what I understood, although he was acting in conjunction with private citizens.

Q And that is not what the decision said?

A Well, that is what I understood.

MR. IANNUZZI: I have no further questions.

THE COURT: Any further questions?

MR. KLAR: No.

MR. ROSENTHAL: No, your Honor.

MR. PUCCIO: I have one further question, your Honor.

THE COURT: Go ahead.

RECROSS EXAMINATION

BY MR. PUCCIO:

Q Mr. Menard, if the police officer is passing by a building and hears someone calling "Help!" from an apartment in the building and rushes up to the apartment and breaks down the door, in your opinion is he violating the laws pertaining to criminal mischief?

A I don't think any citizen will be violating the law according to mischief at that time, that is exactly my point, as the powers of police officers are not different than those of private citizens unless there is a text of law that says so.

Q All right.

Is there any statute or law in Canada authorizing a police officer to break the door of an apartment in that particular situation that I just described?

A No, and there is no law authorizing a private citizen to do the same, and I am sure if a private citizen does the same, he also will be acquitted of any action or

any accusation that would be laid against him.

MR. PUCCIO: I have no further questions.

THE COURT: Anything further?

MR. IANNUZZI: No, sir.

THE COURT: You may step down.

(The witness was excused.)

THE COURT: Thank you. Ten o'clock Monday, gentlemen.

MR. IANNUZZI: May we at that time, sir, go over the motions or --

THE COURT: No, we are going to have the evidentiary part of the case, when all of that is done I will go over the motions, and by that time I expect you will have an opposing affidavit or affidavits.

MR. PUCCIO: Yes, I will.

MR. IANNUZZI: When you say "evidentiary," you mean evidentiary of the hearing?

THE COURT: That is right.

MR. IANNUZZI: Yes, all right.

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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

-against-

FRANK COTRONI, FRANK DASTI and PAUL ODDO,

Defendants.

73-CR-898

United States Courthouse
Brooklyn, New York

December 30, 1974
10:00 o'clock A.M.

B e f o r e :

HONORABLE JACOB MISHLER, Chief U.S.D.J.

I hereby certify that the foregoing is a true and accurate transcript from my stenographic notes in the above entitled proceeding.

HENRY SHAPIRO
OFFICIAL COURT REPORTER

Official Court Reporter
U.S. District Court

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Appearances:

DAVID G. TRAGER, ESQ.
United States Attorney
for the Eastern District of New York

BY: THOMAS PUCCIO, ESQ.
Assistant U.S. Attorney

JOHN H. IANNUZZI, ESQ.
Attorney for Defendant Cotroni

MICHAEL KLAR, ESQ.
Attorney for Defendant Dasti

GERALD ROSENTHAL, ESQ.
Attorney for Defendant Oddo

THE COURT: Mr. Puccio, Mr. Iannuzzi, Mr. Polakoff, and Mr. Klar, Judge Catoggio advises me that a Howard Pearson has been arrested for unlawful entry.

He is one of the defendant-investigators.

Judge Catoggio consulted with me about the right to travel into and from Canada, and to Mexico, and I think that I am in agreement with him that Mr. Pearson should be given unlimited bail limits during this trial -- until the end of this trial.

His arrest for unlawful entry should in no way interfere with his duties in this case. I do not want any claim that the defendants were hampered in any way because of this arrest.

MR. PUCCIO: My understanding is that he was illegally in this country.

THE COURT: I understood that he was in Canada, and came in with some papers.

MR. PUCCIO: He has already been deported, and has no right to come into the United States. He was convicted of bank robbery and deported. He has no right to come to the United States without the permission of the Attorney General.

THE COURT: He is an investigator?

He was convicted of bank robbery?

MR. PUCCIO: He has, as I understand it -- and I will check the file -- Mr. Fried is the one handling the case. I understand that he has a lengthy record. He was convicted of bank robbery. Immigration authorities did check on him Friday.

MR. IANNUZZI: In reference to this person, he is a Canadian. I did not engage him. He was engaged in Canada by the defendant. The man came down and brought some documents with him. I do not know anything about his background or whatever.

I understand that as a result of the proceeding here, that in 1962, he had some violation of the Penal Law of the State of New York, and apparently he was told -- apparently he was deported and told notto return.

He was coming here not in a sneaky fashion. He was sitting right in this courtroom.

I am not responsible for his hiring. He tells me he has been working as an investigator in Canada, and that is his occupation. And he did bring photographs here.

I used some of them the other day in questioning

the witnesses.

MR. PUCCIO: Your Honor, during the hearing on Friday, I believe it was Mr. Landry and one of the RCMP members, who pointed this fellow out to us.

Mr. Stein, who is here from Washington and who has the immigration agency under his jurisdiction, checked it out, and found out that he was illegally here.

If your Honor is going to issue an order giving him the right to come in and out of the United States, I would like to have the opportunity to look into the matter, and find out further.

I do recall I was told that he was convicted of bank robbery, and was deported.

THE COURT: I was not aware of the background.

Still, I would not want to do anything that affects the preparation of the case, because in the event of conviction, that's a point that would be raised --

MR. PUCCIO: I understand.

THE COURT: --that the defendant could not properly prepare, because his investigator was not allowed to gather materials that were necessary for its defense.

Why the defendant happened to pick a man that

was convicted of bank robbery and deported, is beyond my understanding, but these things do happen.

Now, if he is suspected of some criminal activity in connection with his work as part of the defense, or if that is a cover for something else, I do not intendin any way, to grant him any kind of immunity from reasonable search and seizure or anything else.

If he is searched, do not touch anything that has anything to do with the defense of this case.

MR. PUCCIO: There were a few other things mentioned to me by the Canadian officials, as to Mr. Pearson.

I do not want to put them on the record at this point. If necessary, I will speak to Mr. Fried, and we could put in an affidavit.

At least, we should have the opportunity to explore it a little further.

THE COURT: What's the position of the defendant here?

MR. IANNUZZI: All I can suggest, as I have already indicated, this man was just introduced by way of name, that he was bringing some papers down to me, in connection with this case.

THE COURT: You tell me what your future plans are with reference to the aid of this individual?

MR. IANNUZZI: Unfortunately -- this is an unfortunate situation, not of my own making.

Unfortunately, he has made certain contacts with people in Canada and Mexico, that would be essential to the defense here.

I will abide by your Honor's ruling --

THE COURT: My ruling is that his arrest and the fixing of bail, will have no effect whatever on his movements.

Let him gather all the material he wants in Mexico and Canada. He may enter and leave this country --

MR. IANNUZZI: Merely to bring those papers to me?

THE COURT: Normally, the consent of the Attorney General is required. I do not see how the Attorney General could interfere with this Court.

I agree with Judge Catoggio that limits should in no way be fixed in this case, under the unusual circumstances, but on the other hand, if the Government suspects any criminal activity, again, this does not in any way give him immunity.

THE COURT: I do not know whether he has

entered this country under a visa or under our understanding with the Canadian Government --

MR. PUCCIO: I am sure we wouldn't issue a visa to a convicted felon.

THE COURT: They could enter and leave Canada just by showing proof of citizenship.

MR. PUCCIO: You could enter without showing anything.

THE COURT: I cannot grant him immunity. All I can say, is no one has a right to interfere with the defendants' effort to establish a defense to this charge.

MR. IANNUZZI: I think I have indicated -- may I just apologize for the difficulty that has arisen? I did not hirethis individual, nor did I know anything about his background. We are now stuck with a situation that has caused this complication. I did not hire the man, nor did any of the other attorneys.

THE COURT: You can check and see if others can do the same work as this individual.

MR. IANNUZZI: Yes, he could check in Canada and Mexico, without violating our laws --

MR. PUCCIO: I understood that Mr. Pierson contended that he was hired by Mr. Miranda.

THE COURT: Where is Mr. Miranda?

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MR. PUCCIO: He is present in court.

THE COURT: What do you know about this gentleman?

MR. MIRANDA: I know of this man, Mr. Pierson. I did not retain him. He was not retained through me. He is rather well-known in Montreal as a researcher and investigator, and he is quite familiar with criminal law, both Canadian and American.

THE COURT: You mean a "legal researcher: or "investigator"?

MR. MIRANDA: He is both. He is quite cognizant of the law -- criminal law, in the States and in Canada, therefore, that makes him a little more valuable than an ordinary investigator.

THE COURT: Then he should have known that he cannot reenter the United States without the permission of the Attorney General.

MR. PUCCIO: Could your Honor inquire as to who retained him?

THE COURT: Do you know who retained him?

MR. MIRANDA: I was given to understand that it was either the defendant Cotroni or a member of his family.

THE COURT: I understand the difficulty.

I will give him as much freedom as I possibly can, under the circumstances.

I do not know whether every time he enters the United States, he commits another violation.

MR. FRIED: May I introduce Mr. Thomas Mazza, counsel for Mr. Pierson?

On Friday, I interviewed Mr. Pearson in my office, and he told me that he had been employed in this matter as a research/investigator by Mr. Miranda from Montreal, Canada, whom I did not know then.

He told me that he had conducted substantial investigation in this case, and he was going to return to Canada, and would be coming back because he had already made commitments.

I think on January 6, he was to return, which was told to the Magistrate on Friday. He stated he was not a private investigator registered in Canada, but had conducted research and did his own investigation and he did say he worked for other members of the Canadian bar, and gave several names of which I do not have the file in front of me, so I do not recall their names.

MR. MIRANDA: I could give you the names. I am familiar with them.

THE COURT: I am only interested in one thing at this moment:

That is, his arrest in no way interferes with the defendants' preparation for trial, so I have removed all bail limits.

He can go to Mexico, Canada, he can come into the United States, leave the United States, go to Mexico and come back.

MR. MAZZA: Fine, that was my concern.

THE COURT: You say "fine".

I do not know to what extent these conditions immunize him against the charges that he is reentering the United States as an illegal alien.

He has been deported, and it requires the consent of the Attorney General for him to reenter.

MR. MAZZA: That's how I read the Statute.

THE COURT: I cannot change the Statute.

MR. MAZZA: That, I am aware of.

THE COURT: I think Mr. Pearson requires a lot of advice, and I suggest that you consult with Mr. Iannuzzi to find out to what extent the defendants intend to use his services, and whether they can be used by his performing them in Canada, whether someone else could be used as a messenger or courier.

MR. PUCCIO: Your Honor, as I understand it, criminal charges have been filed against Mr. Pearson in this District by Immigration.

When he is released --

MR. MAZZA: He has been released.

MR. FRIED: He is in the custody of Immigration right now --

MR. MAZZA: He has been released Friday, Saturday, bail was posted.

THE COURT: Is he in the United States now?

MR. MAZZA: He just returned this morning. He is outside.

When he was released Saturday, there was a question whether he had to return to Canada, to supply other documents. He met with Mr. Iannuzzi on Saturday, and I believe there was other information that he had to inquire about.

My question was, if he does leave the United States on Sunday, to go to Canada, I do not want him to violate the law when he comes back this morning. My advice to him was to ask permission at the border of the Immigration officials, or the United States Attorney, whatever the case may be, to come back into the United States.

THE COURT: I do not know whether the United States Attorney can give him that permission.

MR. FRIED: He cannot.

(Continued on next page.)

THE COURT: All I can suggest to you is to advise the Attorney General that I strongly urge that he give his limited consent. If the defendants feel that they require his services, that he would be coming into the United States solely for the purpose of this trial, maybe you ought to state the purpose and the length of stay and if he leaves again and has to return, that you state the purpose and the estimate of the time required.

Advise the Attorney General that I said so and I will give him my letter if you wish. It is your job as his attorney to contact him and find out if he can get it.

Attorney Generals do not usually act that quickly. Usually it takes three months to get an answer to a routine letter.

MR. MAZZA: I understand. The reason I mentioned the United States Attorney's Office, it is my understanding that they are an arm of the Attorney General. I am sure that they could exercise any consent that is necessary for him to appear, because the other route might make the whole question moot if it takes three months. This trial may be over with by then.

THE COURT: I can only urge the United States Attorney to send my reaction to the Assistant Attorney

General who has charge of this.

Do you know who it is?

MR. PUCCIO: It would be, I believe, Henry Peterson.

MR. MAZZA: He has to appear on the 6th to answer the charges made against him on Friday.

THE COURT: For that he does not need permission.

MR. FRIED: For those purposes he can be paroled into the country.

MR. PUCCIO: Mr. Iannuzzi indicated that he had no part in retaining Mr. Pearson. When he was informed on Friday that Mr. Pearson had been arrested, the question of difficulty in obtaining certain documents was not raised. We weren't advised that Mr. Pearson was a central party to the defense team and that he had certain documents to bring up, etc. We are finding out about this for the first time now.

JUDGE CATTOGGIO: The complaint says that he was seen in the court house.

MR. MAZZA: He was in this courtroom, your Honor.

MR. PUCCIO: A lot of people are in the courtroom. I wasn't told when I informed Mr. Iannuzzi that the man had been arrested, that he had some special job to do that was being interfered with. This matter is being raised now by the Magistrate and the defense for

the first time.

THE COURT: If it is solely to deliver documents, I do not understand why someone else cannot do so.

If it is the giving of confidential information, it may be that his presence is required.

I think we should first give Mr. Iannuzzi the opportunity to explore the problem and tell me what his problems are. Mr. Mazza in the meantime can explore the problems that his client has.

MR. MAZZA: Yes, your Honor.

MR. PUCCIO: I think the Attorney General in order to give proper dispensation to this gentleman to come in and out of this country, might want to know -- without giving away any strategy -- the extent he is going to be used and the amount of time he will be here, and I could transmit that information to Washington to expedite the approval -- something more than a blanket statement that this gentleman is needed for the trial.

He does have a record. He was convicted and deported. I am sure there are competent investigators that do not have criminal records.

THE COURT: I would rather not explore the defense problems in using someone else. If that's who they want to use, I'd rather say "Come in."

I assume it would be solely for the purpose of

assisting the defense.

How long do you intend to be here, and if he leaves and re-enters again, how long do you intend to be here then?

MR. PUCCIO: We have no objection to that.

THE COURT: I do not think we should chance the problem of interfering with the defendant's preparation for a defense. It is toocomplicated a matter. We have done too much work and I wouldn't want to be trapped by that underbrush.

MR. IANNUZZI: May I suggest in connection with that -- as someone has mentioned -- I did meet with Mr. Pearson yesterday because that was the first opportunity after his release from custody that I had. One of the matters that he is waiting for is subpoenas to return to Canada with, issued by this Court, relative to Bell Telephone --

THE COURT: It's subpoenas issued by this Court?

MR. IANNUZZI: As I understand from Mr. Pearson a judgment in one jurisdiction can be reduced in another. The courts there will so order our so ordered --

THE COURT: That is different.

MR. IANNUZZI: Will your Honor be kind enough to sign the subpoenas? I am having them made up now.

THE COURT: We have no jurisdiction in Canada,

other than over our own citizens. We can subpoena our own citizens, not an alien.

MR. IANNUZZI: I believe it can be so ordered based on our subpoena to the Bell Telephone --

THE COURT: Make sure the Canadian court will so order our subpoena.

It is usually done by way of petition made to a foreign court asking that they issue subpoenas directing the attendance of their citizens in our court with all the necessary fees, and you may find out what the fees are. I cannot imagine them so ordering our subpoenas. They might even be offended by it.

MR. IANNUZZI: The first step is to have the subpoenas ordered here and they will be attached to the petition there.

THE COURT: I will take your advice. I wouldn't do it that way, but Mr. Maranda is the authority. I know if somebody came to me and asked me to issue a subpoena for one of our citizens to attend a foreign country, I'd say to him, "You send me a petition telling me the circumstances." I will not just act on a subpoena.

I have had matters with respect to the West German Republic. I would think that the Canadian statute governing the subpoena power of the Canadian

court directing its citizens to appear here --

JUDGE CATTOGGIO: May I be excused?

THE COURT: Yes, thank you.

I would think that you ought to submit it by way of petition. I do not like the idea of directing someone in Canada to appear here and presenting that to a Canadian judge.

MR. IANNUZZI: It would not be presented "bald face" but it would be presented with a petition explaining the requirements. I think they are interested first in seeing that the court here needs them, by way of subpoena, and in conjunction with the petition they would then entertain it.

THE COURT: Have you checked the statute that gives the Canadian --

MR. MARANDA: To appear in a foreign court, no.

We do need the subpoena from here to show that these witnesses are ordered, then we would make a petition.

In Canada we have letters --

THE COURT: Letters rogatory. That's not a subpoena.

MR. MARANDA: Subpoenas are issued by our courts to our citizens.

THE COURT: The Canadian court has jurisdiction

over its citizens and it can issue a subpoena. I say that a Canadian judge might be offended by an American judge serving a subpoena on one of its citizens.

MR. MARANDA: We couldn't serve your subpoena --

MR. IANNUZZI: May I suggest that Mr. Puccio -- I thought that this method would eliminate the necessity for Mr. Puccio and I going to Montreal and take depositions.

THE COURT: Will the citizen appear voluntarily?

MR. IANNUZZI: We can subpoena them to appear.

THE COURT: You want them to appear in court --

MR. IANNUZZI: This is Bell Telephone. They would honor a subpoena. It is with respect to their records. Either we can examine them there or here.

THE COURT: That is up to you.

There are two ways, either examine them there or here under letters rogatory, or by the service of a subpoena to a corporation here that has jurisdiction over Bell Telephone there.

Is there any firm here that has control over Bell Telephone there?

MR. PUCCIO: I wouldn't know.

THE COURT: That is another possible way.

MR. IANNUZZI: I just indicate this because I wanted to save time. I knew it would take less time to

get them down here.

THE COURT: Maybe they would do it by consent?

MR. MARANDA: They certainly would if they had a letter from your Lordship.

MR. IANNUZZI: That's my understanding, Judge.

THE COURT: Do you believe that?

MR. MARANDA: The subpoena would be considered a court invitation --

MR. FRIED: Why don't you use a court invitation then?

THE COURT: Will they do it voluntarily?

MR. MARANDA: It's to justify the administrative requirements.

MR. PUCCIO: I know as far as the United States Government is concerned, in certain cases we are shown a copy of a subpoena to someone in another country, and they have agreed to come along. It has never been tested.

THE COURT: You have never gone to a foreign court?

MR. PUCCIO: No.

We have subpoenaed "records" and persons from other countries by showing them a copy. That's all they wanted. I am not too sure if the defendants will meet with the same success. We are talking about a

situation where an American official has the subpoena and delivers it to a foreign official.

THE COURT: Suppose I ask you to subpoena the Bell Telephone records?

MR. PUCCIO: All right, I have problems with the Bell Telephone records as to their relevancy --

THE COURT: That is something else. That does not mean that you waive any objection to them.

MR. PUCCIO: I understand that Mr. Iannuzzi wants records of the repairs to the lines.

THE COURT: You may be able to show that there were no repairs.

MR. PUCCIO: I do not know if it makes any difference, whether there was or wasn't.

THE COURT: By the way, the way this damage was done the witness said it takes many years before it even shows. It may never show.

There goes another argument of Mr. Iannuzzi right up in smoke.

MR. IANNUZZI: May I suggest for the purposes of this court, because I did want to bring it to your Honor's attention, it is the defense's contention in this case supported by Toscanini -- not the usual aspect --

THE COURT: I am counting on Luhan coming out

about January 7th and cutting on Toscanino that you won't even use the title.

Read Judge Anderson's dissenting opinion --

MR. PUCCIO: Judge Morgan's --

THE COURT: It is even more destructive, Judge Anderson sat on the original panel and when it came to Fourth Amendment rights, there he said he couldn't go along with it.

As far as you are concerned or I am concerned, there are two judges -- Judge Oakes and Judge Mansfield that thought there was some Fourth Amendment rights against citizens of foreign countries --

MR. PUCCIO: Since the Toscanino case was brought up, it does involve actions of American agents, according to the record we do not have that here.

THE COURT: Incidentally, did you show him the Fifth Circuit case which just rejected Toscanino out of hand? He said they are bound by the Supreme Court in Frisbe and Karr --

MR. IANNUZZI: I am not going to get involved in the most popular aspect of it, but that aspect of Toscanino by way as perhaps one of the first cases that have come down on Title 3 -- there are very few cases with reference to Title 3 that have been decided by the appellate court. I know there was a case in the Third

and one in the Second Circuit, but none having to do with this particular problem. Shb

Toscanino does say that Title 3 is applicable to our telecommunications network and it is the contention of the defense that the majority -- the majority, if not every call in this case, was between the United States and Canada or between Canada and Mexico, and that the United States telecommunications network was used in all of those calls, and it is the contention of the defense that our title 3 is applicable and the Government has to abide by and come within the ambit of Title 3 in this case.

(continued next page)

THE COURT: I may very well invite the reversal here, because I tell you now that my present impression -- unless something comes down before this trial starts -- that it's the place where the wiretap is committed that governs. That is sound traditional law and I shall not overturn traditional law, I shall not overturn Kraft and Suzzi and all the other theories of international law for this case. If the Court of Appeals wishes to do so, maybe that will be tested in the Supreme Court.

MR. PUCCIO: Again we do not have any involvement by any American agents.

MR. IANNUZZI: We haven't gotten to that aspect of it yet.

THE COURT: The argument is that because the call was made from here to Canada, that it's now governed by our law on wiretaps.

MR. PUCCIO: Our law on wiretaps applies to every country in the world, because a call can be made from Hong Kong to New York --

THE COURT: We do not have to go that far. This case is not that broad. If the call was made within Canada, the mere fact there is an international hook-up, I do not think you have to go that far to support this argument.

We will take it on their optimum case. That is

what I did in Toscanini --

MR. MAZZA: May Mr. Fried and I be excused?

THE COURT: Surely, you have your own problems.

Let us say the call is made from here to Canada --

MR. IANNUZZI: And from Canada to Mexico through the United States.

THE COURT: -- the toll is paid here, all right?

MR. IANNUZZI: American citizen calling.

THE COURT: American citizen calling.

MR. IANNUZZI: Mr. Oddo is an American citizen.

THE COURT: Surely, and it's received in Canada. The tap is made in Canada. I would be willing at this point to say if it complies with Canadian law -- if it is legal under Canadian law and I know what legality means --

MR. PUCCIO: There are at least two cases --

THE COURT: If it's legal and admissible under Canadian law, I would say it is good here. I would say the excuse for refusing to admit illegally obtained evidence under our law, would not apply to the Canadian police. That's one argument.

The fact that it is prophylactic, that they wouldn't legally wiretap, we are concerned only about our police force and not the Canadian police force.

We are not policing the world.

MR. PUCCIO: It would be admissible whether illegal or legal --

THE COURT: That is one argument. The second argument is traditional. We are bound by the actions of a state within its own territory. They are the sovereign. If it is legal there, it should be accepted here. It is as simple as that.

MR. PUCCIO: I would just point to a line of cases that your Honor is aware of where a private detective breaks into a room and gets something that is later used at a trial --

THE COURT: I say we can be clear on the record at the outset, if I am wrong --

MR. IANNUZZI: May I suggest this: my understanding or just as an aside, we have fraud cases where -- although the fraud is perpetrated in Canada -- the person is prosecuted here on the wire --

THE COURT: What did you say?

MR. IANNUZZI: He is prosecuted with reference to the wire fraud in this jurisdiction, although no one is involved here.

THE COURT: That is a different theory. That does not mean that because you are out of the country that you cannot commit a crime violating our laws.

That's only where the crime is knowingly and intentionally a violation of our laws. We have that in our drug abuse and control act.

Toscanini argued that, I think, it was giving extraterritorial effect to our penal law, which under some interpretation of international law is violative of the right of sovereignty of a country, but it has been upheld and Toscanini for example never set foot in this country and on his claim he was dragged in here to answer for violations of American law.

MR. IANUZZI: That's the same thing in this case with Cotroni.

THE COURT: It is not the same thing. It is not a question of violating American penal law. The question is whether the action was legal within the country.

MR. IANNUZZI: May I further suggest in reference to a remark by Mr. Puccio -- I know we have to get involved in this case -- it is the defendant's contention, if this matter be illegal in Canada but that Canadian law would accept it, it is not for the American Courts to prosecute under American statutes and use thereafter, if convicted, American jails to accept illegal evidence. It is not our way, just as it is not our way to accept things that Canada accepts.

For instance, the attorney the other day was

saying -- and your Honor indicated some horror -- you could violate a person's privacy and it can be used in evidence as long as you didn't kick the door down.

(Continued on next page.)

THE COURT: Listen, I did not indicate in any way my horror or distate, because I felt for a long time, that the two concepts are different and there are some theorists now, that say there is no reason for barring any illegally seized evidence.

The test is whether it tends to show the truth, and many well-informed lawyers, Constitutional lawyers, feel that there is a good chance that the Supreme Court will cut back on barring illegally seized evidence.

We have that to start with, from the attempt to bar illegally seized evicence from the Grand Jury.

I think that you even have that in yourself. That I could decide without too much trouble.

MR. IANNUZZI: May I suggest that under the posture of our law, at the present, it is the defense contention, or at least, the defendant Cotroni's contention, that this Court should not countenance the use of illegal evidence from any other jurisdiction whether they will accept it, knowing that it is illegal, they say we will accept it illegally, anyway.

THE COURT: I may not have to reach that.

MR. IANNUZZI: I am just --

THE COURT: I first have to find out whether

it is illegal under Canadian law.

MR. IANNUZZI: Yes, sir.

THE COURT: If I find it is illegal under Canadian law, then I have the more difficult problem, I think.

MR. IANNUZZI: Yes, sir.

THE COURT: Of permitting it to come in here, solely because it's -- it's permitted to come in in the Canadian Court.

That is another problem.

MR. IANNUZZI: That is the problem that I am suggesting, but then I am also going further, and suggesting that it is the defendant's contention beyond that, that even if you were to decide, well, if Canadian courts will accept it, therefore, we will also accept it, and I suggest that --

THE COURT: I may come to that conclusion.

MR. IANNUZZI: Yes, you may.

THE COURT: I am not prepared to say I will here.

MR. IANNUZZI: But I am suggesting, that beyond that, I am requesting the Court to invoke Title 3, because Title 3 relates to the United States telecommunication network and unqeustionably that was involved in here.

THE COURT: All right.

MR. ROSENTHAL: Your Honor, may I just state this? In relation to my client who happens to be the only United States citizen here, your Honor has Katz versus the United States, which in some ways says that the -- its the person's privilege --

THE COURT: Which case is that?

MR. ROSENTHAL: Katz.

THE COURT: What does that hold?

MR. ROSENTHAL: I am speaking mostly, it is persons who are protected, not places.

THE COURT: You mean, the fellow in the telephone booth?

MR. ROSENTHAL: Yes.

I don't know how applicable that is, but when I was listening to argument, that came to mind, that we are dealing with a United States citizen, and it's his individual rights that might be involved here, and possibly, if your Honor does reach that question, as to Mr. Oddo, that one would have to look at -- in our law, as to Mr. Oddo.

THE COURT: Now, look, that is another problem. I do not have to worry about that, because, in all probability, Mr. Oddo will be severed.

So I do not have to reach that.

I have got enough problems deciding matters that are before me. I never reach out looking for problems that aren't before me.

I can make enough mistakes on the issues here.

MR. ROSENTHAL: At this point, Oddo is still in the case, your Honor, so I was just suggesting that your Honor be directed also to Katz.

THE COURT: Mr. Rosenthal is saying that it is another reason for severing Oddo.

MR. ROSENTHAL: I didn't mean it that way but --

THE COURT: If Oddo is ever tried, by the time he is tried, we will have some voice from on high as to whether a wiretap that is legal in Canada, and illegal here, would bar it from use against American citizens. That is slightly different from barring it against use by -- against a non-citizen.

All right, gentlemen. I think I have a civil matter first. I have a trial that will probably take about a minute or two.

MR. IANNUZZI: Might I suggest, in reference to the testimony, that I beg your Honor's indulgence to permit Mr. Maranda to be taken out of turn because it's all in conjunction with the law.

THE COURT: Sure.

MR. IANNUZZI: Thank you, your Honor.

(Recess taken.)

MR. PUCCIO: The defense attorneys are down the hall, your Honor.

THE COURT: Yes.

MR. IANNUZZI: Did your Honor indicate that I -- did I understand correctly that Mr. Puccio would undertake your Honor's suggestion and perhaps obtain the Bell Telephone records?

THE COURT: I'm going to ask him, too. I'm going to ask him to ask the Bell TElephone Company whether they would voluntarily give their deposition or appear here with their records, appear here is the best way to do it.

MR. PUCCIO: Maybe Mr. Iannuzzi could give me a list of what he wants.

MR. IANNUZZI: Absolutely.

MR. PUCCIO: We'll work fromthere.

THE COURT: Then if they want, if they say, "We will like some kind of subpoena just for our records," understanding that I have no jurisdiction over them, I'd be glad to issue under those circumstances.

But I don't want the supboena to be issued and someone say, "Don't he know any better?"

MR. IANNUZZI: No.

MR. PUCCIO: I would suggest, your Honor,

that we start with records pertaining to the phones involved here and any repair records, rather than Mr. Iannuzzi indicated he wanted every repairman who ever worked on --

MR. IANNUZZI: No.

MR. PUCCIO: -- on these lines.

I think that they'd have -- they'd be on good grounds if they told us they can't do it.

THE COURT: Why can't you give it to them and tell them which of these records can you give us.

MR. PUCCIO: I think we could probably get the records. I'll check on it.

But as far as the repairmen that worked on the various lines, I think that might be difficult.

MR. IANNUZZI: I would modify my request so as to accommodate Mr. PUccio's suggestion and I think within the terms of the modification we will still have what we need.

That is to say, if Bell Telephone would send its records relative to this, they will send it with somebody who can read them, we don't need the repairman because he will be -- as a record kept in the ordinary course of business be able to read what other repairmen did.

THE COURT: I assume you will take copies of

the records.

MR. IANNUZZI: Sure.

I understand, -- by the way, what we would need it because when they put these records away, they are all put into computer sheets with symbols that we couldn't, as lawyers or laymen, read because you need one of their men, some one of their men coul come and read all of it so we wouldn't need the repairman.

THE COURT: Tell them the defendant is willing to pay for it, which he is, as I understood it.

MR. IANNUZZI: Necessarily, so, yes.

MR. PUCCIO: All right.

I'll ask Mr. Longdraw's office for assistance I can't guarantee that they'll be able to do it.

THE COURT: You do the best you can.

MR. PUCCIO: I'll do the best I can.

THE COURT: It will save a lot of research and conference about how we can get the information.

MR. IANNUZZI: Yes, sir.

THE COURT: And they are records.

What's the difference?

MR. IANNUZZI: May I ask in reference to a letter that Mr. Puccio has forwarded to you and whic

4 he was -- was referred to in a letter to myself concerning the tapes in this case, wherein they indicated that the Canadian Government will not make them available to defense counsel or experts for defense counsel even in Canada and that the only person to whom they will make them available --

MR. PUCCIO: I think that's incorrect.

The tapes that pertain to this --

THE COURT: That isn't the way I read the letter.

MR. PUCCIO: The tapes that pertain to this proceeding will be made available to defense counsel at Mr. Patenaude's office.

The tapes that are not pertinent, they ask be considered or examined in camera and that defense attorneys not have access to them.

MR. IANNUZZI: The difficulty with that is this, your Honor: The tapings were going on for a considerable period of time and the certain select tapes, 21 in number, were selected.

I believe that's the correct number.

MR. PUCCIO: I think it's 22.

MR. IANNUZZI: 22 were selected.

Now, ehrere are many, many other tapes in conjunction with this case and as Mr.Landry said the

other day, they related to suits.

The only way that they can be tied in is someone ties them in. But actually the person listening to these innocuous conversations--I say innocuous without the translation,so to say--would not realize,so therefore, there are many other conversations that may in fact be pertinent that may be used by defense counsel and that the Canadian Government haven't picked out and I suggest that they should not be permitted just to give us a fraction of them and say the others are not pertinent.

Someone should -- someone should determine --

THE COURT: I have no authority over the Canadian Government. I can only look at what the permit me to see.

MR. IANNUZZI: They will permit you to see all of them, sir.

THE COURT: All right.

Then I'll see all of them.

There is a suggestion in Mr. Puccio's letter as I recall that some proceeding was brought up in one of the Canadian provinces.

MR. PUCCIO: Mr. --

THE COURT: And that one of the -- either

6 the purposes or by-products is to disrupt this trial.

And that the tapes would be required up there --

MR. PUCCIO: That's a fair inference.

THE COURT: -- at the same time they are required here.

Is that just a coincidence that they were --

MR. PUCCIO: I have a copy of the subpoena. A subpoena was issued to Bernard Couture who is going to be a witness for us and he was asked to appear in a court in Canada with all the Vega's tapes, originals or copies.

Mr. Landry tells me that if that should happen the tapes would be under the jurisdiction of the court in Canada and would not be available here.

THE COURT: Who is the lawyer who asked for the subpoena?

MR. PUCCIO: Mr. Maranda.

THE COURT: He's going to testify and I want -- you may question him on all that. And find out why the proceeding was brought, how it was brought why, at this time.

MR. IANNUZZI: May I further suggest, however, sir, that these tapes are not in any court but are

available and at this point I'm suggesting to the Court that it is -- I don't have the case on the tip of my finger but I suggest there are cases that indicate -- and the Second Circuit ascribes to this-- that we should be given the whole of information.

MR. PUCCIO: There is no case that indicates that where we are talking about wiretapping conducted by foreign Government in a foreign country.

MR. IANNUZZI: But when it is available and they indicate that they would make it available to your Honor in camera, just as the U. S. Attorney would make things available in camera --

THE COURT: Mr. Iannuzzi is thinking about 3500 material where some of the courts have said that it shouldn't be examined in camera and it should be the defendant who should decide whether he can use it, you see.

But there have been other cases that have said, of course, there are some matters that should be examined in camera. And certainly this is one of the cases.

I assume I'll have English translations.

MR. PUCCIO: Let me just make this point, your Honor. The tape -- the taping began or interceptions began in July of 1970, approximately. And

they ended I believe about a year later, approximately. Pertinent to this case are conversations which took place in December 1970 and January 1971.

NOw, for December 1970, and January 1971 we have handed over everything or let me put it this way: The Canadian Government has given us everything and everthing that we've gotten with the exception of certain, maybe eight or ten conversations which are not pertinent and there is an interest in keeping undisclosed, have been handed over to the defense counsel.

Now, there are hundreds and hundreds of other conversations that don't pertain to this case which I -- I haven't heard and I've used -- and I've -- have not been given access to them.

In other words, the Canadian authorities have selected the conversations from the tapes which are pertinent to this case and given them to me along with all other conversations and logs during December '70 and January '71.

THE COURT: I --

MR. PUCCIO: But to answer your first question, the -- all the others have not been translated but if your Honor would wish to listen to them we would have a translator available,either make one

make one available from here or one would be available in Montreal, who would translate as the tapes were played.

I think it would take many hours.

THE COURT: Let me say this: On the face of it, if a conversation is a self-contained conversation, I don't see how any other conversation at a later time, at another place, could modify what was said.

There are times when you have a part of an admission. For example, if you can conceive of it in a document, where reading a sentence might be unfair because another part of that same statement would modify it or alter it. I can see that. On that theory, Mr. Iannuzzi wants everything that was ever said and if he wants to go even further, even everything that wasn't recorded,produced, if you want to demand the impossible.

Because maybe somebody said something that modifies something else.

MR. PUCCIO: We've taken steps to give defense counsel anything that might have a bearing. In other words, initially we received from the Canadian Government 22 conversations which we supplied to defense counsel.

MR. IANNUZZIP We acknowledge that.

MR. PUCCIO: The claim was made that there may have been other conversations during this time period which may be modified as your Honor suggests or retracts -- may have retracted what was said in a conversation the same day or the day before.

So then even though I think to a certain extent it does compromise Canadian investigations, conversations or logs of conversations which are irrelevant to this case but relevant to other inquiries in Canada, but took place during the same time period as the conversations already turned over were given to defense counsel.

So now the 22 conversations taking place in -- in January -- in December '70 and January'71, have been turned over with all other conversations during those two months.

Now, the -- defense is apparently asking for conversations which took place -- by the way, the conspiracy alleged inthe indictment begins in December of 1970.

Defense counsel is asking for all the Vegas projects. The Vegas progjects began in July '70. There are thousands, probably, of conversations between July '70 and December '70 which have no

11 relevancy to this case but are relevant to another inquiry up in Canada.

THE COURT: Let's get the evidence in the case, please.

MR. IANNUZZI: May I just be heard?

THE COURT: We have spent one hour so far.

MR. IANNUZZI: May I be heard for a moment longer, sir?

It isn't a question of getting tapes that are a year before this alleged conspiracy but during the time period even the time period that we're speaking about, there are conversations that have not been supplied but we have their self-serving analyses of what they mean.

THE COURT: That's a different problem. But I ask you, suppose they bring in a tape of a conversation on December 2nd, 1972?

MR. IANNUZZI: Yes, sir.

THE COURT: Full conversation. This is what happened.

MR.IANNUZZI: Yes, sir.

THE COURT: Why are you entitled to the conversation that occurred on December 20, 1972?

MR. IANNUZZI: Well, in the first instance, there are some phone calls -- yes, phone conversation

that are not complete, even the ones that are supplied. They start with line 15.

THE COURT: That's a different problem. I want to know why you are entitled to conversations had on other dates?

MR. IANNUZZI: May I suggest, in this fashion, the conversations in and of themselves are in this kind of -- I usually refer to as kind of a singsong vague telephonic communication.

They do not mean anything in and of themselves without being corroborated or without -- in other words, you can't tell the conversation without a scorecard, the scorecard saying -- being the person who testifies to the conspiracy.

Then perhaps the conversations fall into place.

MR. PUCCIO: That's debatable, your Honor, I would submit.

MR. IANNUZZI: But in and of themselves, the conversations themselves may or may not be discernible or understandable.

Now, if the Canadian Government have the right of selectivity, they may select the ones that are most readily tied in with the conspiracy but they may think that ones that don't seem to be aren't and in fact they may be. Because the conversations --

THE COURT: How would conversations that don't tie the defendant in the conspiracy be helpful?

MR. IANNUZZI: I suggest this: That these conversations have to do with, if the -- the content of them have to do with suits and rent and there may be other conversations that they have felt, the Canadian Government has felt are not pertinent but they may -- I'm sorry, sir.

THE COURT: All right. Let's go on. I get your point. I don't think it's a problem at all.

MR. IANNUZZI: I'm just suggesting that there--

THE COURT: I assume that we have some live witnesses who will testify as to what suits mean and what shirts mean.

MR. IANNUZZI: But that is not the Canadian men who have selected them. In other words, Mr. Catania didn't select them. The Canadian Government has selected them. Maybe they haven't selected properly, Judge. In order to have the -- the real search for the truth, which we should have here, defense counsel should have the opportunity or at least, your Honor have the opportunity, to determine that perhaps what was allegedly a conversation about narcotics because it's talking about suits or rents, may in fact be something relative

14 to rents and relative to suits.

THE COURT: Suppose there was a conversation that was never recorded, does that mean that the conversation concerning the suits that might refer to heroin cannot be introduced?

MR. IANNUZZI: Not -- but we have conversations that are recorded. I am not suggesting that conversations that were overheard --

THE COURT: I don't understand how you could introduce the other conversations.

MR. IANNUZZI: Merely to indicate that the testimony of the witness Catania is not in fact accurate, that these conversations dealt with other things.

THE COURT: All right, let's assume the second conversation is not being introduced, says in effect now I am really talking about suits and not heroin or drugs.

MR. IANNUZZI: It may be --

THE COURT: Do you think that that self-serving declaration would be allowed?

MR. IANNUZZI: No.

I understand that. There may be -- I don't know what evidence there is, Judge. That's what I'm suggesting and in addition, the original tapes have

been destroyed and there is no question but that there has been editing of the tapes.

We know what can be done with tapes.

THE COURT: That's another problem. And I think I've cited the State case, People against Bryant; a Federal case, a number of times. U. S. against Garcilaso deLaVega, 489 F. 2nd, 761, Second Circuit.

Call Mr. Maranda, please.

(continued next page.)

L E O R E N E M A R A N D A, called as a witness having been first duly sworn by the Clerk of the Court, testified as follows:

MR. IANNUZZI: Shall I proceed, sir?

THE COURT: Please.

DIRECT EXAMINATION

BY MR. IANNUZZI:

Q Mr. Maranda, what is your occupation, sir?

A I'm a lawyer.

Q And would you please indicate to the Court your experience, background, educational background, your present admissions to whatever Bars you are admitted, your associations, professional associations and any other educational, teaching or legal positions that you hold?

A I'm a Bachelor of Arts and Bachelor of Law. I'm a member of the Bar Association of Quebec sinse 1957, a member of the Bar of Montreal, a member of the Canadian Bar. I occasionally lecture to lawyers on criminal law. And I have been in practice almost exclusively in criminal law for the last 15 years.

Q And as a result of your experience in your background in your practice, have you had the opportunity or the necessity to research and to study the laws of Canada concerning telecommunications?

A Yes. The first time I had to study the problem I took a complaint against some police officer in Montreal, a gentleman by the name of Sooney, another one by the name of Kraft, another one by the name of Lamoot, and I charged them with a conspiracy to commit mischief, contrary to what is now Section 387. After pre-inquiry, which is customary to hold in Canada in the case of police officers being charged, summonses were issued but later on the complaint was dropped.

Q Was that complaint dropped as a result of the Court or as a result of the person who brought the inquiry.

A As the result of the person who laid the charges.

Q Is it your testimony that, however, the Court had a pre-inquiry to determine whether or not to issue a charge or information against these police officers and having had the pre-inquiry, charged them with violation of law?

A Yes. And they're -- I said summons but I think it's warrants that were issued against the police officers.

Q Pardon me?

A I said it was summonses but I think it's warrants that were issued against the police officers.

Q Would that be similar to a warrant for arrest?

A Yes. Warrant for arrest.

Q And --

A So this is the first time I had opportunity to study it. Later on my attention was drawn again to the problem. Mr. Menard had given an opinion and I found at that time it was similar to mine. And, of course, for the purpose of this hearing, I had occasion to review the laws and the jurisprudence.

Q Sir, do you have an opinion with a reasonable degree of --

A Well, I --

Q Legal certitude as to whether or not interception or interference with telecommunications is a violation of Canadian law?

A I gave an opinion that I think the Court already has on the record and under oath. I stand by this opinion.

Q And what is your opinion concerning the legality of such activity, sir?

A After taking cognizance of the evidence presented before this Court, I have no hesitation in saying that the police officers who did the wiretapping in this case committed several acts of conspiracy.

Q And could you indicate what laws the police

officers have violated in this case?

A Well, there is the first -- first there is the general section dealing with conspiracy, which is Section 423 of the Canadian Criminal Code. And 423 Paragraph 1, D, says "Everyone who conspires with anyone to commit an indictable offense not provided for in Paragraph A, B or C, is guilty of an indictable offense and is liable to the same punishment as that to which an accused who is guilty of that offense would upon conviction be liable."

Now, Section -- Sub-paragraph A is conspiracy to commit murder, B is to prosecute a person for an alleged offense, knowing he did not commit that offense. And C is conspiracy to induce by false pretense a woman to commit adultery. Therefore, the pertinent section would be 423. 1,D and also Paragraph 2 of 423, which reads like this.

"Everyone who conspires with anyone to affect an unlawful purpose by unlawful means is guilty of an indictable offense and is liable to imprisonment for two years."

Now, in my opinion, the police officers' contravened Section 423 1,D by conspiring to commit an indictable offense provided for by Section 287 and that is a theft -- theft of telecommunication and although the title in the code reads "theft of telecommunication service,"

we have a rule in Canada where the heading is not part of the law.

MR. PUCCIO: I'm sorry.

A Just for purpose of --

MR. PUCCIO: I didn't hear that.

MR. IANNUZZIO: The heading --

A The heading is not part of the law. It's just there for classification purposes and it does not throw any light on the subject. 287 1,B reads like this.

"Everyone commits theft who fraudulently, maliciously or without color of right uses any telecommunication wire or cable or obtains any telecommunication service. And telecommunication is this section means any transmission, emission or reception of signs, signals, writings, I imagine or sounds or intelligence of any nature by wire or cable."

Now, you will notice that 423 1,D used the word "everyone," and that includes everyone, police officers and others.

Q Is there, a section in Canadian law which permits or authorizes police personnel to violate Section 243 or 287? 423?

A 423 or 287?

Q Yes, sir.

6

A Well, there is a section, a general section, in the criminal code, which is Section 25, which applies not only to police officers but to all citizens alike, and it says, "Everyone who is required or authorized by law to do anything in the administration or enforcement of the law." Now, this required or authorized is a positive thing. It is not the fact that it is lawful or permitted. It has to be required or authorized and that means specifically required or authorized.

THE COURT: Authorized by whom?

THE WITNESS: By law.

THE COURT: You said -- you emphasized everyone. Did you mean everyone under all circumstances?

THE WITNESS: It's -- you see, that's what I mean. Everyone applies to 287, to 423, but the protection of persons administering and inforcing the law applies also to everyone. Not only to police officers.

THE COURT: Under all circumstances?

THE WITNESS: Yes. But it has to be in specific circumstances envisioned by the section.

THE COURT: Suppose Bell Telephone consented to the wiretap?

THE WITNESS: Well I would say that Bell

Telephone had no power to consent to the wiretap, inasmuch as it was a -- an interference with the enjoyment of property. Because it had relinquished its right to that property by entering into an agreement with the subscriber and the right of usage was given to the subscriber and no longer was for the Bell Telephone to give away.

(Continued on next page.)

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THE COURT: Mr. Marnard made much of the point, and Mr. Iannuzzi is arguing that the crime was committed because there was a destruction of the telephone wire, the piercing of the insulation.

Would not Bell Telephone have the right to say, well, we waive any right that might accrue out of the destruction of the telephone wire?

THE WITNESS: From that angle, because I think there are several criminal acts involved -- several criminal conspiracies, as I said, but --

THE COURT: Excuse me. As far as that criminal act is concerned, the piercing of the wire, the malicious mischief of the wire, you would say that Bell's authorization would be a perfect defense to any charge?

THE WITNESS: Yes.

Now, there are numerous other defenses open to everyone, to especially police officers. There are none, unless the law provides for one specifically.

Now, for instance if you take an arrest, an arrest is an assault. It might also be a kidnapping.

Now, what stops it from making it a crime,

is the fact that the lawmaker has decided to put that in the criminal code, a section allowing the police officer to arrest.

Therefore, if he has the right to arrest, he has the right to use the necessary force, because thelaw authorizes him to arrest.

Now, in wiretapping, the law does not authorize the police officer to wiretap. There is no specific or general authorization to wiretap. Therefore, if they commit a crime, this defense provided for by Section 25, is not open to the police officer, no more than it is open to the general public.

Now, I would like, if I may, to explain a little more about section 287.

In my opinion, 287 (1) has three elements, the presence of three general elements, the presence of only one of which would make it a crime.

So whoever fradulently uses a telecommunication wire, commits a theft.

Whoever maliciously uses a telecommunication wire, or cable, commits a theft.

And whoever, without color of right, uses any telecommunication wire or cable, commits a theft.

And if your Lordship would look at Appendix 1 of my opinion, you will see there, former Section 287 as it was in 1960, before the scope was broadened, where you did not have this third potential effect that would make it a crime. There were the words "without color of right", which is added on, and you will see also, that the meaning of the type of telecommunication theft, has been broadened by a definition which did not exist in 1960.

Q When you indicate, Mr. Maranda, that a theft of telecommunication was committed under those statutes, or any of them, the theft could be merely the reception of sound, or information, or intelligence of any kind, is that correct?

A The reception of sounds, let us say, without color of right.

Now, color of right, is a state of fact either real or if you have grounds to believe in, that gives you a right to do something. And it is not a fanciful thing. It is not a self-indulged feeling. It has to be something that comes from the normal operation of the law.

For instance, if I --

MR. IANNUZZI: May I interrupt for a moment, if your Honor please?

I think we have witnesses who have remained in the courtroom. I thought we had an agreement --

THE COURT: Do you have any government witnesses here?

(Mr. Puccio thereupon made an observation of the spectators).

MR. PUCCIO: Yes, one witness.

A (Continuing) To give you an example of color of right, and I am quite sure, it is the same here, if an owner of property leases it to someone, and then because he is not getting paid for it, and thinks that the property has been deserted by the lessee, and he rents it to somebody else, and the other person takes possession -- well, of course, the first lessee might complain, or the second lessee has a right to believe himself the true lessee, and he has the color of right.

Q In the situation where you have two subscribers to the telephone who are presently in control of these telephones and paying rent on them, would you consider that the police would have color of right to invade those telecommunications?

A Well, not unless they paid for it, and I do not think they could pay Bell Telephone for it, because Bell Telephone has already sold their rights or rented the rights,

so they would have to pay the subscriber for joint usage, which they are getting for free, and this way, I think it is a theft of telecommunication service, although this is a special theft under 287, and it is the use of the wire or the reception of sounds and signals that make it a theft.

If you will compare this specific section with the general section describing a theft, this general section reads like this:

> "....everyone commits theft who fradulently without color of right, takes or fraudulently and without color of right, converts to his use, or to the use of another person, anything whether animate or inaminate..." etcetera.

Now, you see that there, we have out of these three elements that were like in the alternative in 287, you have to have two of them jointly. You have to have the fraudulently and without color of right, or fraudulently -- that is both of them together -- fradulently and without color of right, where the other one without color of right by itself, can create the offense.

Q When you say this is an indictable offense, does that make it similar to what would be considered a felony in this country?

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A Yes. In 1892, when the first Criminal Code was developed, up to then, we had exactly the same language that is in this country and Great Britain, misdemeanours and felonies.

They decided to divide the offenses in the way they were prosecuted rather than their importance.

So most felonies, or I should say all felonies, became indictable offenses, that is, offenses that could be prosecuted by way of indictment.

Most misdemeanours became offenses that could be prosecuted by way of summary conviction.

Now, as Mr. Marnard pointed out, if under a Federal Statute, you don't have a way to prosecute, that is indicated, the Interpretation Act indicates that the lesser or the less severe way of prosecuting the offense, should be used.

Therefore, the Bell Telephone Act would provide now for a summary conviction offense under the workings of our law at present.

Q Therefore, a violation of the Bell Telephone Act would be considered a misdemeanour?

A Is a misdemeanour, under the actual terms of the Statute, but by way of the Interpretation Act, it becomes a summary conviction.

THE COURT: Do you have an opinion as to the

statutory construction under Canadian law as to whether "OR", the disjunctive, is ever interpreted as the conjunctive "And"?

THE WITNESS: I know of some decisions where "And" was taken as "Or", but none as to "Or" being taken as "And".

I should like to say --

THE COURT: I could give you some cases in American law, where the disjunctive was interpreted as the conjunctive.

THE WITNESS: I don't know of any, I am sorry.

But let's say all the law I have read is that "Or" is the alternative. I have never read anything to the contrary, except when it is preceded by "and" like if you had for instance to go back to this example of 287 --

THE COURT: You would not in any event, interpret 287 as fraudulently and maliciously, and without color of right?

THE WITNESS: No, I would not. And I would think that if it were so, it would be unduly repetitious.

And I do not think that, by the way, if we are

going to go from 287 to 387, where the word "wilfully" is used, I don't agree with Mr. Landry and with respect to the Chapman case he quoted, -- not the Chapman and Grange case -- but the other Chapman case he quoted out of British Columbia, County Court judgment.

And in support of my contention, I have two judgments, one is by the Court of Appeals of Ontario. It is an unanimous judgment delivered by the now Chief Justice of Canada, Mr. Justice Laskin, and I think it is to the point.

Now, you will notice when you read this case, which is Regina versus Rese, since our sovereign is Queen Elizabeth, all cases are called Regina --

(Continued on next page)

THE WITNESS: May I show you this? I made several photocopies.

MR. PUCCIO: I have one for you also.

THE COURT: Don't I have this?

MR. IANNUZZI: No, sir, this has just been obtained.

THE WITNESS: I brought it over this morning.

THE COURT: Would you please mark a copy of it.

MR. IANNUZZI: May I have this copy marked?

THE CLERK: So marked as Defendant Cotroni's Exhibit E.

BY MR. IANNUZZI:

Q Would you proceed, please, Mr. Maranda.

A Of course, the idea is that wilfully was not mentioned in the charge as it should have been, but the right Honorable Laskin reasoned that there can be no agreement to do something unless it is wilfully done or it is to be wilfully done, so you have wilfully in its sense that it is the pre-determined act and you have also something there very interesting, the interference with the peaceful enjoyment of property. If you will notice in this Appeals Court decision the interference with property was very slight. You have people who put on someone's lawn a cardboard -- a painting with a swastika on it -- and this was considered

enough to be interfering with the peaceful enjoyment of property.

Now, I think this is much less serious than invading the privacy of a citizen. You will see also that the unlawful damage to property was only the painting of a sign, which of course was to the owner of the property something that could be remedied, while the actions of invasion of privacy -- unknown to the victim -- makes it in my view more serious, a greater tort than the other.

Your Honor, I have also --

Q May I just ask this:

With reference to Regina v. Reiss, the damage was not done physically to the property?

A That's for this conspiracy to commit mischief by interfering with the peaceful enjoyment of property, as far as the damage to the property, it was the painting on the cardboard of a swastika sign.

Q Very well.

A In the same vein, there is a much more elaborate judgment by the Nova Scotia Supreme Court, Regina vs. Nenos and Walker --

MR. IANNUZZI: May I have that marked?

THE WITNESS: There is a copy for you, Mr. Puccio.

MR. PUCCIO: Thank you.

THE CLERK: Seven-page document marked for Identification as Defendant Cotroni's Exhibit F.

THE WITNESS: In this judgment you will notice that it deals with a wire that was cut -- an absolutely useless wire that probably would have been sold for scrap, and you will also notice that there could not even be a price put on the damages. The only reference to an actual damage in this case is because the insulation was broken and the cable could have been damaged to exposure to sea water and that could have been the only thing, so it became important for the Court of Appeals to decide whether there had to be a damage assessible in dollars to sustain a conviction. The conviction was found to be in order.

As a matter of fact, the accused had been acquitted in the court below, but verdicts of guilty were rendered upon appeal by the Attorney General.

Q In Canada, the prosecution is also permitted to appeal; is that correct?

A Yes. In the Court of Appeals the prosecution is entitled to appeal on a question of law alone and in the Supreme Court, both the prosecution and the accused are entitled to appeal on questions of law alone -- appeal law.

Q Any other law, sir, that you suggest are violated

by telecommunications?

A In relation to Section 423(2)(a) and (b) to effect an unlawful purpose or to effect an unlawful purpose by lawful means, I would say that if the gathering of criminal -- of evidence for the purpose of a criminal investigation is a lawful purpose, it was done through lawful means and the agreement to do it was within itself a conspiracy and an indictable offense, the culprit would face a year's imprisonment.

If you don't look at the ultimate purpose, but if you look at the primary purpose, it was to commit an unlawful purpose -- an unlawful purpose is not an indictable offense. If it were, this section would not apply. Only 423(1)(d) would apply. If it is an indictable offense, it can still be a criminal offense, being a summary conviction offense or it could be a provincial penal offense.

Q Is it your testimony then, if the gathering of information be for a lawful purpose, but if effected by unlawful means, that would be a crime in and of itself?

A It would be a crime as long as there were two people agreeing to do it. This is a common law conspiracy.

Q Is there any specific authorization anywhere in the Criminal Code to permit an invasion by the police of telephone communications, even to effect a lawful means?

A There is none providing for it and as far as I know there is in most provinces a provincial forboding, so it would be unlawful -- it would be against the law of the province and Section 25 of the Act to incorporate the Bell Telephone Company of Canada.

As far as Section 25 is concerned, I gave my opinion to the fact that the intercept was used by his Honor, Judge Grant, in a very restricted way. I should think that all military men for instance when they catch on to the message from the enemy lines would say they intercepted the message, although the message still keeps going and reaches from one enemy to the other. I think a football player when they catch the signals from the other team could signal the intercept --

THE COURT: How about a forward pass, when it is knocked down?

THE WITNESS: That is also an intercept, but it is --

THE COURT: Not in sports.

It is intercepted when it is caught, taken into possession.

THE WITNESS: I am very sorry, I may be less familiar with sports than with some other domain.

THE COURT: Suppose I sent you a message by messenger --

THE WITNESS: And the messenger is seized --

THE COURT: And the message taken from him and then the message was recovered and brought to you, would that message be intercepted?

THE WITNESS: I would say yes, because somebody else other than the one it is intended for got it and that's where I think interception in the widest sense would mean -- Maxwell says the first thing -- the first thing he says there is to be construed in the general meaning of the word --

THE COURT: A common-sense meaning of the word. You say the common-sense meaning is that any interference with the common caring is an interception?

THE WITNESS: No, any other person getting the message other than the one intended for it would be an interception, whether the message finally arrived at its destination or not. It would not even have to be delayed. You could see it for instance on old ships where a sender would be used or a light signal -- Morse code -- somebody from the other side would intercept -- would see the communication, he could use the knowledge, the intelligence in it, and that's where I think the question is of the true sense of interception is to make use of intelligence not destined to you.

Your Omnibus Bill here would be totally meaningless if interception didn't mean that.

Q Title 3?

A On interceptions.

So it would be the same thing with the Australian law and the British law.

Q Has the Canadian law or the Canadian courts ever defined "intercept" with respect to telecommunications?

A To my knowledge the only definition is the one in the Copeland and Adamson case.

Q Besides Judge Grant in that case, which is a Court of original jurisdiction, has the Legislature or the Parliament now defined "interception" in the common sense usage of the word relative to telecommunications?

A I would not say that it is now interpreted in the common sense way, but in a specific way for the specific purpose of the Criminal Code.

THE COURT: Do you have party lines?

THE WITNESS: We do.

THE COURT: Suppose someone listens in?

THE WITNESS: It is an interception. As far as our law is concerned and as far as Title 3 it is. I know in Australia it is and in England it is an interception.

Frankly, I believe there was no better word -- I know you took exception to that when --

THE COURT: How about listening in?

THE WITNESS: You could interfere without interception. By blanking out radio communications, you would not be intercepting in the way you would be getting knowledge.

THE COURT: How about cutting the wire without listening?

THE WITNESS: That's in a way an interception. It is not a total interception, because you are not getting intelligence on the wire. You are depriving the person --

THE COURT: It is the listening that is the interception, not the deprivation to the receiver?

THE WITNESS: It would be listening because you are getting intelligence from the conversation and I think that is pretty near the definition of 287 --

THE COURT: The cutting of a wire so the other party cannot get the call, you say is not an interception?

THE WITNESS: It is in that sense, but not a complete interception.

THE COURT: I could not think of a more completed one.

THE WITNESS: The perfect interception is when you deprive the other person of the intelligence and keep the information yourself -- that's the perfect interception. Then you have an imperfect interception. One way is cutting off the party intended to receive the message or another imperfect is to get the knowledge while not depriving the person it is aimed for.

(Continued on next page.)

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Q Did Judge Grant in the Adamson and Cobeland case, indicate that his opinion would be different as to whether it was a violation of Section 25, had there been evidence of interference or impeding of the communication?

A This is an interpretation that you might put on it. If it hadn't been the way he thought, he might have seen it another way, but we must not forget that Section 25 provides for interference and provides also for molesting or injuring telephone lines and equipment.

If cutting the protective covers is not injuring, I do not know what injuring is.

If taking lines, and changing them from their intended use to some other use is not molesting the lines, I do not know what molesting is.

Q Would you consider, sir, in your opinion, that the disturbance or the invasion of the intended use of the Bell phone equipment, would be a violation of Section 25 -- would be interference sufficient to be a violation of Section 25 of the Bell Telephone Act?

A If we are going to abide by the ruling, where the common sense of the word is used, I think that the whole process described here, was an interference and was injuring lines and molesting lines, also.

Q When you talk about interfering with private

property, would that not only be the private property of the subscriber, but also of the Bell Telephone Company?

A I was talking of private property as regards 387 -- the enjoyment of the property would be against the subscriber, but damage to the property would be against the Bell Telephone Company.

The Bell Telephone Company has to provide the wire for its service and is the absolute owner of it, except for that part of ownership which is used.

Section 25 of the Quebec Telegraph and Telephone Act is of course,quite similar to the Ontario Act.

I think that has already been stated. The Chapman and Grange case, is the only authority on the subject and it proved two things:

First it proves that even police officers can be found guilty of conspiracy, and it also proves that contravention to a provincial penal statute, the agreement to do so, can be a comm0n-law conspiracy, a conspiracy provided for by Section 423 (2) (a) and (b).

Q In the Chapman-Grange case, did the Court consider as part of this marshalling of the facts -- in making its decision -- that Chapman was in the capacity of a plainclothes detective, at the time of the offense?

A Well, the judgment states so very clearly, that

the Judge took notice of that fact, but I personally don't think it was material to his decision, because it matters not whether the citizen is a policeman or an ordinary citizen, because the same rules of law apply to all of them, police officer and private citizen, except when there is a special specific statute, providing for a special benefit to police officers, like a search warrant, for instance.

Q Did the Court indicate in the Chapman case, that there was a special provision that would isolate or insulate a policeman from these violations of law, by way of invitation or telecommunication?

A No, he did not, which leads me to believe he didn't find it material, and that in turn, supportsmy contention that there is no differnce to be made.

For instance, the Criminal Code provides for a search warrant, and as Mr. Landry pointed out, the other day, the search warrant is directed toward the search and seizure for a thing.

Of course, you cannot seize a telephone communication, but authority can be given to do that and that is proven by the new section 178.1, etcetera.

Now, this was never given judicial -- that is, legal authority was never given to the judiciary to grant authority to anyone for that, but for a search warrant, yes, and even

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citizens can execute a search warrant.

Q Under the present law that you have now, regulating strictly and specifically, invasion of telecommunications, is there a provision for the use of telecommunications that had been intercepted prior to the enactment of the ACt?

A I would look at Section 178.16, and say, this is such a provision and at Section 178.2 or .20 which I am sorry, I don't think I gave you -- yes, I think I produced all 178.2 or .20.

Q 178 is your Act relative to wiretapping? Is that correct?

A To wiretapping and to other invasions of privacy.

Q All right.

A 178.2 reads like this:

"Where a private communication has been intercepted by means of an electromatic, acoustic, technical or other device, without the consent, express or implied, of the originator thereof, or of the person intended by the originator to receive it, every one who, without the express consent of the originator thereof, or of the person intended by the originator to

receive it, wilfully uses or discloses such private communication, or any part thereof, or substance, meaning, or purport thereof, or any part thereof, or discloses the existence thereof, is guilty of an indictable offense and is liable for imprisonment for two years."

Now, there are exceptions where the subsection I just read you does not apply, but what I want to point out now is that the law in general speaks at present and is not retroactive, unless it is stated to be retroactive.

This is the general rule.

Now, I find here, we have a situation much like wherein some countries, in some states, you could have possession of let's say, firearms -- handguns, without having to register them.

At the time that you had these firearms, their possession was quite legal, then came a law where you went to register all the weapons.

In some states, it happened. In Canada, it happened. From that moment on, even though you had a right to have those arms, you had to go and register them, and if you did not register them, you were, from that day, committing an offense.

Well, I think that Section is 178.2, which puts you in such a situation. No matter when you acquired your handgun or

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your conversation, -- your private conversation, your private communication, no matter when you acquired it, you may not use it or disclose it. If you look at this Section, I think it is very clear, that that's what it means, that nowadays, the only cases where you are not committing a crime is the cases provided for by subsections 2 and 20 of 178.

Now, if you go back to 178.16, the only compatible explanation to that, would be to apply exactly the same interpretation that now you cannot admit in evidence, unless the interception was lawfully made, and that means lawfully made at the time like, of course, when it comes time to register your weapon, you cannot have been able to register a stolen weapon, and it is the same thing now.

Q Is it your opinion therefore, under the new legislation, as of July 1, 1974, that telecommunications that had been intercepted by way of interference or without specific authorization, would not be admissible in a court of law in Canada, because of the provisions of 178.16 and 178.2?

A Exactly.

Q Therefore, is it your testimony that the communications in this case, could not be admitted into a court of law in Canada, because of the fact that they were

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unlawfully obtained at the time of their inception?

A Precisely.

MR. IANNUZZI: I have no further questions.

THE COURT: We will take a short recess at this point.

(Recess taken).

(Continued on next page.)

CROSS-EXAMINATION

BY MR. PUCCIO: (Cont'd.)

THE COURT: Are we ready to proceed?

MR. PUCCIO: Yes, your Honor.

THE COURT: Mr. Maranda.

I might say that I am to interpret in Canadian law, but I know that you said that "or" is never, as far as you know, interpreted in the conjunctive. I just went to Black's law dictionary and/or one interpretation, the other interpretation, a disjunctive article used to express an alternative or to give a choice of one among two or more things.

It is also used to clarify what has been -- what has already been said and in such case means "in other words." To wit, or that is to say. Or is frequently misused and Courts will construe it to mean and, where it's so used.

Intercept -- this is Goldman against U.S. 316 US, 129, 62 Supreme Court, 993, 1934, interception within the Federal Communications Act prohibiting interception of communications by wire or radio indicates taking or seizing by way of before -- or before arrival at the destined place and does not ordinarily connote obtaining of what is to be sent before or

or at the moment it leaves the position of the proposed sender or after. Or at the moment it comes in position of the intended receiver.

Another case, the interception of a telephone call within the statute prohibiting divulging of any intercepted communication involves idea that a speaker thinks he is talking to one person, whereas in fact a third person is listening and when a person calls a number on the telephone and speaks a message to every answer, he cannot claim that his message was intercepted merely because the person responding is not the person to whom he intended to speak.

All right. Go ahead.

BY MR. PUCCIO:

Q Mr. Maranda, you'ver represented Mr. Cotroni in the past, have you not?

A Yes.

Q And in what matters have you represented him?

A I represented him in the extradition proceedings directed against him. In the present case --

Q In connection with this case?

A Yes.

Q Have you represented Mr. Cotroni in any other matters in Canada?

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A Not that I recall.

Q Have you represented any members of Mr. Cotroni's family in any matters in Canada?

A I represented in a very minor capacity, about 15 years ago, one of his brothers. But in a very minor capacity. I was like the fourth attorney. I was just beginning in criminal law then. I don't even think Mr. Cotroni's brother was aware of my presence.

Q You've represented Mr. Dasti in the past, have you not?

A Yes.

Q Where have you represented Mr. Dasti?

A I represented him when he was charged with being a keeper of a gaming house.

Q Would that be the Victoria Sporting Club?

A Yes. The trial is not over yet. But is contrary to what was said here. He was not convicted.

Q And the Victoria Sporting Club was the subject of two of the wiretaps in issue here, is that correct?

A If I can believe your witness, yes.

Q And do you have a social as well as a business relationship with members of the Cotroni family?

A I know Mr. Frank Cotroni since we were about 16 years of age. I've met him on and off through the years.

I probably had dinner with him two or three times in my life.

Q And would the same be so for Mr. Vincenzo Cotroni?

A Ever since Mr. Frank Cotroni's arrest, I've had several meeting with this brother. Prior to that, I don't think I have spoken to Mr. Vincent Cotroni more than ten times in my life.

Q And you were with Mr. Frank Cotroni the night of his arrest in connection with this case, is that correct?

A Yes.

Q Now, you also represent Mrs. Frank Dasti, in Canada?

A Yes.

Q Do you not?

A Yes.

Q And would you describe for us what your relationship of her presently entails?

A I represented her as the complaint against Mr. -- in a complaint against Mr. Patenaude and Mr. Lavallee for conspiracy with a few persons and the charge -- the information, should I say, was laid. In conformity with what, in my opinion, I just gave you.

Q What was the essence of the charge made by

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Mrs. Dasti against Mr. Lavallee and Mr. Patenaude?

MR. IANNUZZI: I would just ask the Court to permit the witness to finish one answer before --

THE COURT: If you haven't finished the answer, then say so.

THE WITNESS: They are all conspirators, conspirators to commit an offense under 287, conspirators to commit an offense under 387.

THE COURT: I'm sorry. I finally found the case and I don't want to analyze it, that specifically says listening in is not an interception. I'm sorry. No. It doesn't. This is with consent so I didn't find the case.

Go ahead.

BY MR. PUCCIO:

A And charges of common law conspirators, either to effect unlawful purpose or to effect a lawful purpose by unlawful means, the means being contraventions to -- of Section 25 of an act to incorporate the Bell Telephone Company of Canada or Section 24 of the Quebec Telegraph and Telephone Company.

Q In plain language, what it is, is the -- what is the conspiracy, the alleged conspiracy involved?

A Wiretapping.

Q Now, would you --

A In plain language.

Q Now, would you tell us please, have you represented Mrs. Dasti since the inception of her suit against Mr. Patenaude and Mr. Lavallee?

A I have not seen her since.

Q No. Have you represented her since the inception of this complaint she's made against Mr. Patenaude and Mr. Lavallee?

A I don't --

Q When did you begin representing Mrs. Dasti in connection with this matter?

A When we laid the complaint.

Q When was the complaint laid?

A Offhand I don't know.

Q How many weeks ago?

A In December.

Q December of this year?

A Yes.

Q After the proceedings began in this case, is that correct?

A Oh yes. After -- after I obtained the transcript of the evidence here.

Q And you've been obtaining transcripts of all

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the proceedings here for use in this civil action up in Canada, is that correct?

A No. Not all.

Q But most?

A I had the transcripts of the 14th of November and -- well, the day I requested to have the transcripts exemplified -- authenticated by this Court. I don't remember the date but I also had this evidence.

Q Now --

A These are the two days.

Q Mr. Maranda, did you causd to be issued any subpoenas in connection with Mrs. Dasti's civil suit?

A Yes, I did.

Q And when did you cause these subpoenas to be issued?

A Within a day or two after the complaint was laid.

Q That would be in December of this year?

A Yes.

Q Did a Judge in fact issue the subpoena or did you issue the subpoenas yourself?

A I asked the Judge permission to issue the subpoena. And he granted me the permission and I issued the subpoena. That is, I did not issue because we don't

issue. All subpoenas are issued -- depending on whether it's a Court of Record or not a Court of Record. If it's a Court of Record by the Clerk of the Court. If it's not a Court of Record, by the Magistrate or Justice presiding that was actually the Court but not by the Clerk. In that instance, it was a Justice of the Peace and I -- I asked him for permission. Then I went to the Clerk's office and the supboena made out and they were signed by a Justice of the Peace.

Q Now --

A Who happens also to be the Chief Judge of Sessions of the Peace in Montreal.

Q And was it only one subpoena that you obtained in connection with this matter or more than one?

A No. It was two.

Q Who were they directed to?

A One to representative of Bell Telephone Company -- no. Bell Canada. It's the -- they changed the name a couple of years ago.

Q What did you seek in that subpoena from the representative of Bell Telephone Company?

A Documents pertaining to the -- a -- certain telephone numbers.

Q And are they the telephone numbers that are

in issue in this case?

A Most of them, yes.

And I also sent a subpoena to Mr. Couture.

Q What did you request -- this was a subpoena duces tecum, is that correct?

A Yes, both of them were.

Q What did you request from Mr. Couture?

A Originals and copies of tapes of conversations, logs, et cetera. Between, I think it was -- of --

MR. PUCCIO: May I have this marked?

A From memory, I'd say 1st of January, 1969 to --

THE CLERK: Two page document marked Government's Exhibit 10 for identification in the hearing.

A June 30th, '74.

Q Would you look at Government's Exhibit 10. Do you recognize that document?

A Except the -- I would say this is a photocopy of a subpoena duces tecum?

Q Issued to Mr. Couture?

A Issued to Mr. Couture and aside from the stamp just put on by the Clerk and an inscription in typewritten in red, I would say that this is a true copy of the subpoena that was issued.

Q And the inscription in red is a translation of the French, is that correct?

A I'd have to read all of it before I can tell you my opinion as a man who speaks French. You want me to do that?

Q Why don't you read it?

A I disagree with the first line, with the translation of the first line.

THE COURT: You agree or disagree?

THE WITNESS: I disagree with it.

Q Well, --

A Although, I would say the general meaning is approximately that.

Q Maybe I can shortcut this a little bit. You do ask Mr. Couture to produce all the originals and copies of tape recordings obtained from electronic surveillance relative to various telephone lines, is that correct?

A Yes.

Q During a given period?

A It was stated here in the originals had been destroyed, so I asked for them just in case. Maybe they were destroyed here and they were not destroyed over there.

Q Well, you have asked --

A If the witnesses were telling the truth I

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could not possible get the originals.

Q But you also asked for all copies of tape recordings?

A Yes.

Q Now --

A That means all copies and there -- in their possession. I knew there was at least, at least three copies of each conversation that was introduced in evidence here available.

fls.

(Continued on next page.)

THE COURT: In the ordinary course of events how long would it take for that civil suit to go to trial?

THE WITNESS: Anywhere from -- depending upon the options. This is an optionable -- these are optionable charges. And then he can stand trial before a jury or a judge alone.

Now providing of course that -- it could also be before a Magistrate without any preliminary hearing. We have a preliminary hearing back in Canada. If there is a preliminary hearing the trial could be in eight days after arraignment. If there is a preliminary hearing, well --

THE COURT: Isn't this a civil suit?

THE WITNESS: No, this is a criminal case.

THE COURT: Oh, the charge was criminal.

BY MR. PUCCIO:

Q As I understand your testimony --

THE WITNESS: In accordance with the opinion expressed before this Court.

Q This is not a civil case then, it is a criminal case, is that right?

A Yes.

THE COURT: Why couldn't all this wait until we

had completed this trial?

THE WITNESS: I do not think, your Honor, that it mattered very much. It would stall anything here. On the other hand you wanted a low court opinion. As I heard, you asked for one day maybe you could get a low court opinion that way. That was the reason I didn't see any harm in it. I still don't.

Q You are aware, are you not, Mr. Maranda, that the copies of the tapes that have been supplied to defense counsel were made from the master tapes and are still in the possession of the Quebec Police?

A I thought they were here because the way you have been talking --

THE COURT: Is there a civil suit going on anyplace that you know of concerning wiretapping?

THE WITNESS: The only suit that I am aware of is the criminal complaint, criminal information, made by Mrs. Dasti against Mr. Patenaude and Mr. La Vallee, which is an ex-parte hearing and it is normally not made public.

THE COURT: Are you paid by Mrs. Dasti?

THE WITNESS: I have not yet been paid.

THE COURT: Mrs. Dasti said here he did not have funds so I appointed counsel for him.

THE WITNESS: I did not send Mrs. Dasti any bill.

THE COURT: Do you know of any funds that the Dastis have?

THE WITNESS: I know of no funds the Dastis have except that I know Mrs. Dasti works. She has to work. But I do not think she is getting a very high salary. She is working as a receptionist. She answers the telephone.

THE COURT: Have you talked fee to Mrs. Dasti?

THE WITNESS: No, I have not. I have no intention of charging any fee to Mrs. Dasti.

Q Now, you heard Mr. Landry testify at this hearing of last week, did you not?

A Yes.

Q You also heard Mr. Menard testify?

A yes.

Q Do you agree with their contention that the legality of the seizure of evidence does not effect its admissibility with certain exceptions?

A Yes.

Q I am talking now about the admissibility of illegally seized evidence in Canada.

A Yes, of course.

Q And do you agree that --

A If you look at my opinion you will see I quote two cases, Begin vs. Attorney General for Quebec and Kaniu, Son of Kuruma, which the latter being a decision of Privy counsel, which was followed by our Supreme Court. Now of course the Supreme Court is our highest tribunal but formerly the Privy Council was.

Q So I take it that you would agree that the tape-recordings made in connection with the Vegas Projects would b e admissible in evidence in Canada today even if the actual interceptions were illegal --

A No.

Q --or the actual wiretapping was illegal?

A No. And I think I said why previously in answer to questions by Mr. Iannuzzi. If you would like me to repeat them, I will, but --

Q Well, is it your feeling then -- your opinion then that the Protection of Privacy Act is retroactive?

A No, it is not retroactive. It applies to use today of anything that you have per se, perforce and any introduction in evidence of a conversation, or of a private communication, is of a private communication that was intercepted before it is introduced in evidence. And the law doesn't say how long before. So it covers all private

communications in the possession of the police officer. That is not being retroactive. That is being very present.

Q Are you aware of any judgments rendered in Canada concerning the application of the new Act, to wiretapping that was conducted prior to the inception of the new Act?

A There is only the cases of Le Sarge and Des Jardins Entereaux. Des Jardins Entereaux had been in Montreal. It referred to the Le Sarge case. So I was aware of these two cases. The moment I wrote my opinion I have read them, and with due respect to the judges, I am not in agreement with them. Of course my opinion might not carry much weight against the weight of judicial opinion. But it happens that for decades the law will be interpreted in Canada one way and then in one fell swoop the Supreme Court changed.

Q The Supreme Court has not changed Des Jardins and the Le Sarge opinions?

A As far as Des Jardins is concerned it cannot be brought to the Court of Appeals attention because on one count Des Jardins was acquitted and the Crown did not appeal. And in the other count it ended in a locked jury. And you cannot appeal a locked jury in Canada. Mr. Des Jardins or Mr. Theraux would not appeal their acquittal even though the

ruling was adverse to them.

Q So those two decisions which are contrary to your opinion still stand in Canada today? Is that correct?

A As far as the Le Sarge decision is concerned, I don't know, because I don't know where the trial is at at the moment, but as far as Des Jardins and Theraux, well, I already told you what occurred.

Q Well, are you suggesting that another judge has reviewed the Le Sarge decision or that the judge --

A I don't know where it is at. Let's say that Mr. Le Sarge was acquitted. This case could never be reviewed by the Court of Appeals. Now, if Mr. LeSarge was found guilty, then there can be an appeal and that will give us insight on what the Court of Appeals does. But as far as I am concerned this happens often, and it happens all the time, that courts of original jurisdiction see a legal problem in different ways, almost like lawyers see the same legal problem in different ways.

Q Now, in preparing to render your opinion here you had to study both Le Sarge and the Des Jardins cases, is that right?

A Yes, that is correct.

Q So the two cases directly in point are in opposition to your opinion, is that right?

A They are directly against --

Q Directly against your opinion?

A My opinion on the point is that in my opinion the law is not retroactive but applies to the present procedure even regarding things past. And citing that, the rest doesn't matter.

Q On that point your opinion is directly contrary to the opinion of Judge Martin and Judge Bisson as stated by them in the Des Jardins and Le Sarge opinions?

A It is.

Q And it goes a little bit further than that, does it not, isn't there also the statement in the opinions that the wiretapping does not violate the statutes of Canada that you brought up at this hearing?

A Yes.

Q Isn't it also found -- to give you both questions at once in the interest of saving time --didn't it also find that the wiretapping is illegal and not an illegal practice?

A Yes.

Q I am not asking you whether you agree with that. I am asking you whether or not Judge Martin and Judge Bisson stated that.

A They stated that but their attention apparently wasn't -- as far as Judge Bisson is concerned I know that for

a fact because I talked to him. And I asked him if his attention had been directed to Sections 287 and 387 of the Criminal Codes, and also to Section 178.2.

THE COURT: Well, I of course can't take private conversations with the judge as to why he decided a certain way.

THE WITNESS: This was not brought to their attention. They didn't deal specifically with those questions. They dealt with broad statements, and I think both of them following the Copeman and Adamson case.

Q Of course the Copeman and Adamson case which preceded the Des Jardins and Le Sarge opinions held wiretapping was not illegal and that the wiretapping evidence was admissible?

A As obiter dictum, yes.

MR. PUCCIO: May I have a moment?

BY MR. PUCCIO:

Q Mr. Maranda, I take you are also familiar with the opinion in Chapman vs. Grange?

A Yes.

Q And I believe you also stated that it was not material to the decision in that case that Mr. Chapman was a member of the police force, is that correct?

A Yes.

ols.

Q Would it be fair to state that as far as the Court was concerned in Chapman vs. Grange, Mr. Chapman was acting as a private citizen when he conducted the wiretap?

A It wouldn't be fair to say that because the Judge specifically states that at the relevant time Mr. Chapman was acting as a plainclothes police officer.

Q Well, is it your understanding that opinion that Mr. Chapman was conducting a criminal investigation into a violation of law on behalf of the Ontario Police Department?

A I don't think there's anything in the record to indicate that or to deny that. You can argue pro and con.

Q The Court doesn't point to any investigation that he may have been conducting -- any official investigation he may have been conducting at that time which required the use of wire? Is that correct?

A That would require the use of wiretapping? Well, in view of my opinion --

Q Or that involved --

A (Continuing) -- you would come to that conclusion.

Q You don't think any investigation would require the use of wiretapping, is that correct?

A Not previous to -- that wiretapping in the

sense that it was used here or demonstrated here, not before June 30, 1974.

Q So then you believe that there was no need in fact for wiretapping on the part of law enforcement officials before June 30th, 1974?

A I never said that.

Q Well, you don't believe that wiretapping could be conducted by the police in any fashion to your June 30th, 1974 --

THE COURT: Lawful.

Q (Continuing) Lawful?

A That's it. I am quite sure that there are many things that the police ought to have the right to do like I am also quite sure that there's a few things that they take upon themselves that they like to do that they shouldn't do.

MR. PUCCIO: I have no further questions.

THE COURT: Any redirect examination?

MR. IANNUZZI: Well, yes, if your Honor please --

MR. PUCCIO: Oh, one further question.

BY MR. PUCCIO:

Q (Continuing) Now, in connection with that case of Mrs. Dasti, the complaint of Mrs. Dasti which you now have described as a criminal action, did the Judge or

Justice of the Peace or Magistrate hear any testimony in connection with that matter?

A Yes.

Q And were you present during the taking of testimony?

A Yes.

Q And who testified?

A A representative of the Bell Telephone by the name of Croteau and Mr. Coutere.

Q Has there been any resolution of that matter since this testimony has been taken?

A Yes.

Q And what was the resolution?

A The complaint was refused.

Q The complaint was dismissed?

A Yes.

MR. PUCCIO: I have no further questions.

MR. IANNUZZI: May I proceed sir?

REDIRECT EXAMINATION

BY MR. IANNUZZI:

Q Mr. Maranda, you indicate that the complaint was refused or dismissed. On what basis was it done?

A Well, the judgment ran 17 pages so I will try to give you a resume from memory because if I weren't -- or

if I wasn't in a Court of Law I couldn't tell you what happened, but I think I can here. The Judge keeps the judgment on the evidence when a summons warrant doesn't issue.

In cases where at issue he sends a judgment and the evidence to the Justice of the Peace who is going to hear the charge, if there is a hearing, or the Judge is going to hear the trial. So in these instances the Judge has kept the judgment. And I will do my best to give you a resume of it.

One of the reasons was the Judge applied the maxim which he called deminimis lex non jurat, or non jurat lex which originally was deminimis non curat praetor, which applied to the judgment down below.

Now, in my humble opinion in view of the judgment of the Court of Appeals of Ontario and of Nova Scotia, this doesn't apply. In fact there was no animus forendi. In fact there was no animus forendi in the actions of the police, that they didn't not want to steal, and also, with due respect, they forgot to take into account that Section 287 is different from Section 283, which is the general definition of theft, and also forgot probably that a man intends the consequences of his actions. And as far as the mischief count, they said the damage was small, and that is where he applied the

principle that the law is not cure for little things.

And they found also that there was no obstruction, interruption or interference with the lawful use or operation of property, which is also in the Appeal Court judgment in the case of Refe and against 386.1 which is the description of what is meant by wilfully, and this is described as such:

Anyone who causes the utterance of an event by doing an act or by omitting to do an act that it is his duty to do knowing that the act or omission will probably cause the utterance of the event, and being reckless, whether the event utters or not, shall be deemed for the purposes of this event wilfully to have caused the utterance of the event.

THE COURT: We'll adjourn at this point. We'll continue at 2:00 o'clock.

(At 1:00 o'clock p.m. a recess was thereupon taken to 2:00 o'clock p.m.)

THE COURT: You may continue, Mr. Iannuzzi.

MR. IANNUZZI: Yes, I have a couple of questions.

MR. PUCCIO: In the interest of saving some time, I take it from Mr. Maranda's testimony he has a copy of a judgment rendered by a judge in Canada pertaining to the very tapes in issue here?

If so, I ask for the production of that so we may make a copy?

THE COURT: I thought I heard him say --

MR. PUCCIO: That he had an 18 page judgment?

THE WITNESS: No, as I explained, when there are no warrants or summonses issued, the judge keeps the evidence and the judgment for itself.

THE COURT: But you learned somehow of the reasons?

THE WITNESS: I was present at the reading. He read it to me.

THE COURT: Privately?

THE WITNESS: No, in court, when there was no one else present.

MR. PUCCIO: I understood from Mr. --

THE WITNESS: I gave part of a resume of the judgment. I could give you the rest. I have about two minutes to make as complete as my memory will allow.

THE COURT: He does not have the judgment. The Judge informally told him the basis for what he did.

MR. PUCCIO: Is there in fact a written judgment?

THE WITNESS: There is a 17 page written judgment and the Judge read it to me, but he is keeping it to himself, so what I am giving you is to the best of my memory and ability the resume of the judgment with all the points that the Judge brought up, with my comments on it.

THE COURT: Mr. Puccio, you recall when the jury that returned this indictment was organized? Was it that month or was it a long term jury?

MR. PUCCIO: I believe it was regular Grand Jury.

THE COURT: The indictment was returned November 1, 1973 --

MR. PUCCIO:. I think it was before that, Judge.

THE COURT: I am sorry, wait a minute now.

MR. IANNUZZI: It was a 1973 indictment.

THE WITNESS: The extradition proceedings had the testimony of one Kevin Gallagher. That could give you the date.

THE COURT: I am sorry, October 9th, 1973.

MR. PUCCIO: I believe it was the regular October, 1973 Grand Jury.

THE COURT: We amended our jury plan to include those under the age of 21 as of October 1, 1973, so if this jury was organized on October 1st or after October 1st, 1973 then the panel included voters under the age of 21.

MR. PUCCIO: We were in the process of checking. I spoke to Mr. Orgell about it. He said the plan was amended to include 18 year olds --

THE COURT: The Administrative Office or the Judicial Counsel, after the voting age was reduced, gave us a certain amount of time to add the names of voters under the age of 21. In order to do that we had to get the jury list and of course that took time. The very earliest we could get it was October 1st. That's when we did it. We didn't get the jury list until July of the next year. They first had the right to vote in November of 1972, so I think it's already included. The first Grand Jury under 21 --

MR. PUCCIO: We are checking that.

From Mr. Orgell I gather it was very very close to that time.

MR. IANNUZZI: Mr. Puccio said he would get us the information. By the time we decide the motion, we might have that information for your Honor's edification.

THE COURT: All right.

L E O R E N E M A R A N D A, having been previously duly sworn by the Clerk of the Court, resumes the stand and testifies further as follows:

REDIRECT EXAMINATION

BY MR. IANNUZZI:

Q Mr. Maranda, in this determination by this Judge concerning the case that you brought, did that Judge indicate that wiretapping by policemen was illegal?

A No, he did not.

Q Did he indicate that the basis for his determination was that while there was damage, it wasn't sufficient damage to cause him to issue a summons or whatever it is?

A He did state that pertaining to the charge under 387, that is the conspiracy to commit a crime mentioned by 387 and pertaining to Section 25 of the Bell Telephone Act, these words about molesting and injuring lines he did not see anything too, but I took it for granted that he applied the same principle to the Bell Act as he did to Section 387 of the Criminal Code.

Q That the damage was not sufficient to warrant a summons?

A Yes, and that's when he quoted or --

Q In connection with your dissertation of this morning and your reference to Regina v. Reiss, which is the defendant's Exhibit E for identification, and Regina v. Nenos and Walker, which is the Defendant's Exhibit F, do those opinions support the legal opinion of this Court that you have just mentioned?

A Certainly not. They contradicted it.

Q These cases Regina v. Nenos and Walker and Regina v. Reiss, those are Superior Courts to the Courts in which this hearing was held?

A Highly superior. Our lowest is the Justice of the Peace, which is the capacity of Judge Arnold, who is 36 years of age, with a year and a half or two of experience, who was acting in that capacity, while the others are Appellate Courts of Ontario and Nova Scotia.

Q Is it your opinion that the Appeal Courts -- the high courts of Canada have determined that the amount of damage is insignificant as long as there be damage?

A I do not know the Supreme Court's ruling on this but it would appear to me very clearly that two Appeal Courts -- two of our Appeal Courts have given their opinion on the

subject and represented by those two cases, and there is a third much older case that I know of, but didn't think would be of much help, which also supports that contention but in a very round about way, and I personally think the ruling in that case could not be applied to modern circumstances and that's why I did not quote it, but these are the only ones that I know about in Canadian juris prudence where the question of even the slightest injury or the slightest disturbance or interference with the lawful enjoyment of property is deemed to be enough to warrant a conviction and if you notice the Court of Appeal of Nova Scotia reversed an acquittal on that question.

Q In connection with Sections 283, which is the general theft section, and 287 which is the theft of tele communications, is there a distinction between the elements as far as the conjunctive or disjunctive is concerned?

A It appears to me very clearly and I am sorry that I don't -- I have not brought with me the Interpretation Act, but the interpretation does state that when things are stated in a manner like "or" only one suffices -- only one element is sufficient and in 287 one element is sufficient out of three alternative elements, maliciously, fraudulently or without color of right, while under 283V without color of right part has to be in conjunction with fraudulently.

Q Does it say that specifically, sir?

A That's the way it reads:

"Everyone commits theft to fraudulently and without color of right takes or fraudulently without color of rights converts to his own use."

Q The legislature specifically used the words in Section 283 and specifically used the words in 287?

A Yes, specifically added the words "without color of right" in 1960 and they were absent before that.

Q Now, in the case of Adamson and Copeland, which has been referred to very often in this court, was it a significant determining factor of the decision there that fact in Ontario the Board of Commissioners had specifically provided for wiretapping by the police?

A Evidentally the Judge considered that a chain of command by the Police Commissioners in Toronto constituted legal authority and this is the view of the judge --

THE COURT: What is the source of the authority? Doesn't it have to come from Parliament?

THE WITNESS: That is my contention, that only Parliament in criminal matters can give authority or in provincial matters like users of telephone lines would fall within the province -- strictly within the province -- would fall under the Provincial Parliament,

which is called the Legislature, to distinguish it from the center or central Government which is called Parliament.

It would seem to me in matters of criminal investigation, only Parliament has the right to direct the action of police officers -- to regulate them.

THE COURT: You say the Court there, based its opinion on a false assumption? It started out with some Commissioners making the rules?

THE WITNESS: It is my humble opinion.

BY MR. IANNUZZI:

Q In any event --

A Because as far as using things, you see like in Section 24 of the Quebec Telegraph and Telephone Act, when it says "Unless lawfully authorized or directed to do so," but to me lawful authority is different from a lawful act. It has to be an authority that is according to a law, not authority that comes from idea, from an assumption of authority like I could have said to a police officer, "Do this" or "do that." They would get the authority from me, but it would be worthless unless there is a statute providing for the giving of authority. If there is no statute, I would say there is no lawful authority and the criminal code is a good

example of this because when it wants to give authority it gives authority and says so.

Like with Section 178 it does give authority, before that there was no statute or law that would give authority except the general rules.

Now, the general rules to give authority is to the use of one thing -- who can give authority to use one thing except the owner or the lessee or somebody else who has a right to it. If you don't have a right to it, then there must be a law creating the right to give authority.

Like for instance, a search warrant gives authority to dispose of property without giving a right of ownership. It is an exception, but there is no exception in existence in criminal law -- not only in criminal law, in all the laws of Canada and Mr.Landry has been unable to quote one and to save my own life I couldn't quote you one.

Q Mr. Maranda, assuming that the judge in Adamson-Copeland was correct in determining that for him to lay down rules for wiretapping would interfere with the judgment of the Board of Police Commissioners in Ontario, is there just a rule permitting wiretaps by the word of the Commissioner in Quebec?

A No, there is no such rule. I stated so in my opinion. Mr. Landry also stated that there was no power in

the Police Commissioner of the Province of Quebec to do that.

Judge Laperriere or Lapierre, who was vice-president, wrote as far as he is concerned there is no such rule although the Court of Appeals in the Province of Quebec have held under Section 16 of the Police Act that there are general powers of the Commissioner to assist in the investigation of crime and to give directives, but that's general broad statement is restricted by three subparagraphs, A, B and C, which state that the Commission will do it like setting up a scientific identification center, a data center and making rules for the choosing of policemen and a training center and things like that.

(Continued on next page)

Q Mr. Maranda, you indicated or referred to the vice-president of the Board of Commissions as Judge Laperriere?

A Laperriere or Lapierre.

Q Is he a judge?

A He has to be a judge.

Q A judge of a Court of Law?

A Yes, but he does not sit in a Court of Law. He has been appointed to the bench and taken to that position right away. Never sat in a Court of Law and when he acts as a Vice-President of the Commission, he is not acting with the power of a Court, he is just acting with the powers given by the Police Act.

Q Is this the judge who rendered the opinion that he did not believe that the Police Commissioner had the authority to regulate wiretapping?

A Apparently he is the one.

I fully believe Mr. Landry as to the authenticity of the letters. It appears to me his is truly the vice-president of the Police Commission.

Q These facts concerning the Quebec Police Act and the lack of authority to regulate wiretapping, distinguish the Adamson-Copeland case from the facts involved in a matter of the Province of Quebec?

A Evidentally the judge in this case would not have had a leg to stand on if it had to render judgment in the Province of Quebec.

As far as I am concerned, even the authorization in Ontario is not --

Q But assuming that the judge was correct in Ontario, he would not be correct relative to matters in Quebec?

A He would not have that leg to stand on.

Q Very well.

The matter of LeSarge, did not the judge in LeSarge indicate -- that would be Judge Martin -- indicate that the answer to the question of whether or not the privacy act of Canada was legal prior to June 30, 1974 would depend determination of whether or not the privacy act was retrospective --

THE COURT: You mean retroactive?

MR. IANNUZZI: Thank you.

A Or as the Judge himself has said:

"Do not have any retrospective effect."

That is on Page 14 of his opinion or his judgment.

Q But did he indicate that that question hinged on whether or not wiretapping was legal or illegal and I refer

you to the last paragraph on Page 7 of Judge Martin's opinion -- seven lines from the bottom, sir?

A It seems strange to have to decide whether Section 178.16 is or is not retroactive, he would have to decide whether wiretapping was illegal or not. It looks like you are trying to find a conclusion that will suit your purpose, more than trying to decide independently what has to be decided and if you intertwine both of course you say it can't be retrospective because wiretapping was not illegal and therefore the act is not retrospective, which to me there should be a relation of cause to effect, as stated on Page 7, but I would just consider this to be an aside because he does go back to the gist of the matter when at the end of Page 14 he reads them both separately. I don't think one is dependent on the other.

THE COURT: In your opinion no wiretap was legal or illegal after July 1st, 1974 in any trial?

THE WITNESS: I am sorry, this is not my opinion. After June 30th, 1974 no wiretapping -- no illegal wiretapping could be introduced into Canada.

THE COURT: You say if it were legal before -- if the wiretap was prior to July 1st, 1974 and was shown to be legal, it would be admissible even though not consistent with the rules set down in the protection

of privacy act?

THE WITNESS: You certainly could not ask people who were obeying the law at the time they were doing the act to foresee the legality of what would be done.

THE COURT: Then you agree with the Court in that case?

As I understand it, that is all the Court said.

THE WITNESS: That is not all the Court said, with due respect. I think the decision on whether it is retroactive or not is sort of a red herring. The Court says that it was legal or it was not illegal in the circumstances of the case, so to me that is a very important decision. That's what Judge Martin decided. It was not illegal under the circumstances of the case, but on the other hand because of his views on the retroactivity on the law bearing on the decision, he comes out with the fact that it is not retroactive, therefore, you could not apply the other provisions provided for by 178 because it would be impossible to get judicial authorization before it existed and other reasons, but my own interpretation of 178.16 is that this is a procedural question and

when you are in a trial you may not introduce into evidence any private communications unless the interception was lawfully made, but if it had been lawfully made previous to the introduction of the law or lawfully made after the introduction of the law, it would still be lawfully made.

THE COURT: I understand.

THE WITNESS: That's why I say the law is not retroactive and should be read clearly in this sense.

Now, it is possible to imagine that there was wiretapping done legally -- it is possible to imagine it, but also it's in theory.

In practice it's almost impossible to imagine it could have been done without breaking one of the several laws.

When I talk of breaking one of the several laws I mean prima facie. I do not mean at the very end of a trial with the eyes of the jury giving the benefit of the doubt after due explanation by the accused, because the accused can have several defenses opened to him. Certainly, color of right in this case, but there could be a number of defenses. I personally think that on what has been said here, there was no legal excuse -- justification, and no legal authorization.

Therefore, it could not have been prima facie legal.

BY MR. IANNUZZI:

Q Mr. Maranda, under the circumstances in this case, without authority by the Police Commission, without the Police Commission having authority, would you determine that the tapes in this case were legally or -- withdrawn -- were lawfully or unlawfully obtained?

A I would not state that they were unlawfully obtained.

Q In your determination, in conjunction with your opinion, would it also be your further opinion that these tapes would not be permissible in a Court of Canada pursuant to the new privacy statute and Section 178.16?

A My opinion is that they should not be permissible but of course they have been permitted in two instances. But that does not mean that it is going to be so forever.

THE COURT: You are saying the cases were wrongly decided?

THE WITNESS: That is my humble submission. If they had been rightfully decided, they would not have been admitted.

THE COURT: Mr. Klar, do you have any questions?

MR. KLAR: I just have two or three questions.

CROSS-EXAMINATION

BY MR. KLAR:

Q You are familiar with Mr. Landry's letter to Mr. Puccio?

A Yes.

Q Item 42 of Government's Exhibit 3500 material, I call your attention to Page 3 of that letter --

MR. PUCCIO: Discovery material.

Q Mr. Landry says he has reviewed the procedures told by the Quebec Police Officer instrumental in the electronic listening device... he has found in this case the officer did consult with the appropriate superior officer of the Quebec Provincial Police and did obtain an authorization.. to carry on the proposed interception involving Mr. Frank Cotroni and Mr. Frank Dasti.

Now, we are talking about the time of the interception. Are you aware of any such procedure in Quebec which would set forth who the police officer could consult with with regard to obtaining authorization for a wiretap?

A No such legislation in existence in the Province of Quebec.

Q In particular --

A No legislation authorizing, no legislation determining who the proper superior officer can be. Seems to

me there is no proper superior officer that could be consulted to give such an order.

Q With respect to that, the Police Act of Quebec of 1968, does that make any mention whatsoever of who the governing official may consult with respect to a wiretapping?

A No mention.

THE COURT: Anything further?

MR. PUCCIO: I have a couple of further questions.

RECROSS-EXAMINATION

BY MR. PUCCIO:

Q Can you give us again the name of the judge who rendered a judgment or opinion in the case of Mr. --

A Duranleau.

Q When you were testifying concerning that judgment, you were referring to certain notes which you took of the judgment; is that correct?

A No.

Q You were referring to some papers?

A I said to the best of my memory and recollection.

Q I believe you were referring to some papers to refresh your recollection?

THE COURT: Did you look at anything to refresh your recollection?

THE WITNESS: I might have looked at something while I was speaking, but it was not in order to refresh my recollection. I invite Mr. PUccio to go through my briefcase. There is nothing in there, I am sorry to say.

BY MR. PUCCIO:

Q I do not think that would be necessary.

Did you take any notes when you heard the Judge read his judgment?

A I did not.

Q So your testimony concerning that judgment is entirely from your memory; is that correct?

A Yes.

Q I would like to clarify one point:

Is it your position that before July 30th, 1974 a legal wiretapping could be conducted by police officers in Montreal?

A I imagine it could have been done, yes.

Q Would you be able to tell us how that legal wiretap could be conducted in your estimation?

A By going to the Bell Telephone people, requesting their authorization first --

Q Their authorization to do what?

A To install a ring-down circuit that is to be

kept open 24 hours a day instead of being intermittent like the regular service to a subscriber. It is based on mathematical probability, so many percent of the circuits will serve so many number of telephones.

I am not giving you the exact figures, but let us say 20 percent of the subscribers will use a certain exchange. The Bell People figure nobody is using a telephone all the time. If 20 percent of the subscribers should open their lines 24 hours a day, then the other 80 percent would never be able to use their telephone, so one way to avoid this pitfall would be to have a ring-down circuit, and the third --

Q That was the first, I believe.

The first thing you said was get authorization from Bell Telephone to rent a circuit; is that correct?

A And to connect it to a line.

Now, you get the subscriber's permission because the subscriber is not necessarily the person who you want to record. Let's say for instance you have Pierre the Barber. You say to Mr. Pierre, "We want to tap your line? Do you agree?" And he says "Yes." So at that time you have permission of Bell, you have permission of the owner and he is the one entitled to the privacy -- he is the one paying for a private line. Then the eavesdropping you do is

just like you do in a room and then you have legal authority under Section 24 and you have legal authority of the Provincial Statute and Section 25 of the Federal STatute and if you do it that way, I don't think before July 30th, 1974 you were committing a crime in Canada.

THE COURT: When you have the consent of the subscriber, it wouldn't be a violation? You wouldn't have to get a court order for that kind of a tap, would you?

THE WITNESS: I do not know. I don't know about that, because the way the law is written -- and I am not responsible for that -- it's concerned only with the parties to the communication and does not contemplate the rights of a subscriber.

Q Mr. Maranda, you are saying that prior to June 30, 1974 the only way to conduct a legal wiretap in Montreal would be to get the consent of the subscriber and the consent of the Telephone Company to tap the phone; is that correct?

A I cannot claim to be able to imagine all possible legal ways. You asked me to give you one, I gave you one.

Q Could you give me another?

A Offhand, no.

Q That's the only way?

A Not because I cannot give you another, that doesn't make it the only way.

Q You didn't let me finish the question.

What I was going to ask you, that's the only way you can think of right now of conducting a legal wiretap before June 30, 1974; is that correct?

A Yes, my imagination is not more fertile than that.

THE COURT: Why would you require Bell Telephone's permission?

THE WITNESS: Because their equipment is going to be tampered with. They are going to be molested, when you record your line that you are paying for to the subscriber's line.

THE COURT: That's one of your assumptions?

Suppose it was an extension on someone's wire and the subscriber said, "Go ahead"?

THE WITNESS: That's another way, but I was thinking of a tap with --

THE COURT: The usual tapping equipment?

THE WITNESS: This type of a tap that was being used in the instant case.

THE COURT: That you call molesting the telephone

wires?

THE WITNESS: Yes.

(Continued on next page)

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A (continuing) and of course Bell Telephone furnishes if you want to find the right wire you can find it without cutting up their wires.

Q Now, in Regina against LeSarge which you alluded to in the redirect examination, Judge Martin I believe --

A Yes.

Q -- decided the question of whether or not the Protection of Privacy Act should be retroactive, whether it would be held to apply to wiretapping done before June 30, 1974, is that correct?

A Yes, on page 14.

THE COURT: The witness prefers not to use the term retroactive. I think what he said is that the use of the taps prior to June 30, 1974, is barred if offered in the trial after June 30, 1974, if it was illegally obtained.

THE WITNESS: If it was illegally obtained after June 30, 1974, any tap illegally obtained, either before June 30 or after June 30 could not be used.

THE COURT: Well certainly after because it expressly says so by statute.

THE WITNESS: Well, the statute says unless it was lawfully --

THE COURT: "Lawfully" there is a word of art.

It means in accordance with the statute.

THE WITNESS: In accordance with the existing laws at the time it was made.

THE COURT: That is what you are reading into that.

THE WITNESS: I beg your pardon?

THE COURT: That is what you are reading into it.

THE WITNESS: Yes. The interception was lawfully made. I say lawfully made, made in accordance with the laws in existence at that time, at the time it was made. If it was before June 30 -- the general statutes and the specific statutes that we have been talking about all day -- if it was after June 30, these statutes plus the ones pertaining to judicial authorization.

THE COURT: You said before how can you bar lawfully attained taps. You couldn't possibly have anticipated the wire tap law. Well, I ask you if the concept in Canada was that the test is whether it is reliable and not whether it is lawfully used.

THE WITNESS: That would be the general test unless there is an exceptional statute. I consider Section 178 with all it's subsections to be an exception to the general rule.

THE COURT: I know, but based on the same statement that you made, how can anyone who lawfully obtained testimony expect that it would be barred because in the event of a wiretap law requiring certain conditions to be met -- why shouldn't the same concept apply?

THE WITNESS: I think it would not be barred.

THE COURT: I say that's your argument. You said why should it be. Why should unlawfully obtained testimony be barred when the party intending unlawful testimony expected it to be used as it has been in Canada for many, many years --

THE WITNESS: I agree with that but Parliament took away that expectation by specific statute providing that from the 30th of June on you had to do away with some illegal things.

THE COURT: That is your statutory interpretation.

THE WITNESS: Yes. But it is a statute of exception.

THE COURT: Wouldn't you think that a change in the law like tnat would have to be by clear express intent of the Legislature.

THE WITNESS: Well, if I may compare 178.16 with 178.2 I cannot find it any clearer. This is

the natural meaning of the words.

THE COURT: Well, doesn't it mean -- the statute defines the various steps for a lawful wiretap, and when it talks about lawfully attaining of wiretap evidence that it refers back to that type of evidence, evidence obtained in accordance with the statute, and shouldn't that term be confined to that meaning.

THE WITNESS: Well, it would have been easy for the lawmakers to add like it often does the interception that was lawfully made in accordance with this part. And you have this all through the Code. In accordance with this part, or in accordance with this section. And you have that in all Federal statutes. When they want to restrict it to the new enactment they say in accordance with. Now they have not said that. They leave it very general.

THE COURT: Is there legislative history to this statute?

THE WITNESS: Yes, there is. It starts with -- with the report which I talked about in my opinion, and we say -- this is a rule in Canada that we should not look at the Parliamtary debates in order to assess the intention of the Legislatures. We are bound a little bit by the letter of the law also, and we should look at what the lawmaker has said rather than what it wanted

to say, especially in criminal matters.

THE COURT: I have always had trouble with what is commonly referred to as legislative intent.

THE WITNESS: That avenue is barred to us.

THE COURT: Statutory interpretation, we are looking to the committee reports and the debates on the floor of Congress, particularly of those who are sponsoring the bill to give us some indication as to what was intended.

THE WITNESS: Well, I have read the Wennet Report. I quoted a couple of places. I have read the Commission Report. I have read the Parliamentary Debates. It is truly of no help because there is no consensus. The Minister of Justice Lang was of the opinion that wiretapping was legal, that there was authority to do it but that it should be regulated. The Wennet Commission was of the opinion that there was no such authority and that it should be given to law enforcement officers.

Minister Goideau was the Solicitor-General at the time and said that they never used it on account of the prevential statute. So nobody came up with --

THE COURT: Mr. Maranda, in order to interpret the decision of the judges, you said, well, I had a

6 1 private conversation with him and he told me what it
2 meant.
3 THE WITNESS: No --
4 THE COURT: When it comes to the meaning of
5 legislative intent, to the meaning of the statutes
6 you say, oh, in Canada we don't go behind it.
7 I understand that legislative intent is a very
8 confusin g concept at times. And I can understand that
9 I am bound by the statutory law. You don't use the
10 legislative history. And yet you say you read every-
11 thing in the history of the legislation.
12 THE WITNESS: Yes.
13 THE COURT: For what purpose?
14 THE WITNESS: I read it because it was all part
15 of some work on the subject by Mr. Manning whose re-
16 ferred to Judge Martin's judgment. And I quote page 14,
17 for instance, Mr. Manning is quoted in his book,
18 "The Protection of Privacy Act." I read that and that
19 gave me all of the background except there were some
20 excerpts from the Wennet Committee reports.
21 And I have been reading the Wennet Committee
22 report because the president of the Commission is a
23 Montreal judge.
24 And of course we feel it was a very important
25 work.

And he was one of our own. So I think everybody interested in criminal law in Montreal had read the report. I reread it after reading Mr. Manning's book.

(Continued next page.)

Q Mr. Maranda, in other words you recognize Mr. Manning as an authority in the area?

A No, I don't.

Q But you read his book?

A Yes, I have read his book. It is not because a man writes one book and then he becomes an authority.

Q Well, how many books do you suggest he would have to write in order to become an authority on the subject?

A Well, he could be an authority without writing one book.

THE COURT: One good one is enough.

A (Cont'g) A man can be an authority without writing a single book.

Q Well, are you aware that Judge Martin quotes from Judge Manning's book in his opinion?

A Yes, I just said so, on page 14, he quotes Mr. Manning on page 113.

Q He quotes the principle of law which indicates that there is a difference between the substantive and procedural provisions as far as retroactivity is concerned. Are you familiar with that?

A Yes.

Q And he in line with Mr. Manning's book decides that since the provisions of the -- well, I will quote it:

"...that the substantive provisions (which do alter the character and legal effect of any transactions already entered into, namely, the making of illegal acts previously legal) do not have any retrospective effect as the provisions of Section 117.16 so inextricably bound up with the substantive provisions they ought not to be given retrospective construction..."

Are you familiar with that principle?

A Yes, Judge Bisson also bought this.

Q But you disagree with what Mr. Manning's conclusion is in that respect?

A I certainly do not disagree with what he states on page 113 of his book as to the conclusion that they ought not to be given retrospective construction.

I still say it is no --

THE COURT: Excuse me.

Q By the way, did you ever frequent the Salon Pierre which was the subject of one of the Vegas projects?

A Yes.

Q Did you frequent this establishment during approximately June of 1970 to June of 1971?

A Quite possibly.

Q Did you ever use a public telephone in that

establishment during that period?

A Certainly. If I was there during that period I used it because my wife calls me there every time I go for a haircut.

Q And during the same period, during approximately between June 1970 and June 1971, did you ever have occasion to call Frank Dasti at his residence?

A I would doubt it.

Q Did you ever have occasion to call Frank Dasti at the Victoria Sporting Club?

A I would say it is not probable.

Q Did you have occasion during the same period to call Mr. Catroni at his residence?

A That I would doubt very very much because I don't think I called his residence more than twice in my lifetime.

Q Did you have occasion during that same time period to call either Mr. Rossini or Mr. Mendola at their residence?

A Certainly not.

THE COURT: Is your office some distance from the Salon Pierre?

THE WITNESS: It is about six blocks away. And the Salon Pierre is also approximately four

blocks away from the Courthouse. That would be like half way between my house and the Courthouse. Also my office and house are in the same building.

Q So it is quite possible, I suppose, Mr. Maranda, that one of your conversations was overheard during the duration of the Vegas problem?

A It is certainly quite possible. But I would more than likely assume the calls that had come from Mr. Dasti's residence than myself calling Mr. Dasti or Mr. Catroni. But after three or four years I wouldn't know where I called from, if I called, and where I was when someone called me.

MR. PUCCIO: I have no further questions.

THE COURT: Anything further?

MR. IANNUZZI: Just a couple of questions, if it please the Court.

REDIRECT EXAMINATION

BY MR. IANNUZZI:

Q Did you indicate that the Winnette Commission had indicated that there was no authority for wiretapping in Canada although they thought there should be an enactment of legislation to permit it?

A Yes. I quote on page 82 and 85, I think, of the Winnette Report, Report of the Canada Committee on Correction.

Q Did you also indicate that the Solicitor General indicated that the Canadian Federal Police or the Royal Canadian Mounted Police did not use wiretapping because it violated the provincial law?

A This was a parliamentary debate that I took cognizance of through a third party. It is not included in Mr. Manning's book. But I inquired about it because I heard Mr. Fox, a member of Parliament, had inquired from the Solicitor General whether the RCM&P did use wiretapping. And the answer was no.

Q In connection with the alleged tapes in this case and the fact that the original tapes had been destroyed, and the secondary tapes have been added to and spliced together, do you have any opinion as to whether these very tapes could be used in a court of law in Canada?

A No. It would depend upon whether the judge on the voir dire and everybody is satisfied that it required all the rules. I think Mr. Landry was inagreement with me on that point except where he stated that the best evidence rule did not apply to criminal matters.

I did, after hearing of the other day, go back to my sources and I found -- where I had found it the first time anyway -- in Canadian Criminal Cases, second edition, by A. E. Poppel, who was the editor of Criminal Reports,

and the publisher of Cranshaw's Criminal Code, and diverse treatises on evidence, now deceased. It's on page 87, the first paragraph on top of the page is exactly to the effect that the best evidence rule is not to be departed from lightly. And that a good lawyer has to explain why he is not producing the best evidence, which of course is quite similar to the opinion your Honor gave on the 27th.

Q And, Mr. Maranda, is it your opinion that the law of Canada insofar as wiretapping is concerned has changed since July 1, 1974 to the effect that the courts in Canada will now not accept illegal wiretapping?

THE COURT: The statute says so. It says wiretap evidence procured in violation of this Act is barred. It doesn't say it in that language, but that's it. That is the clear meaning of it. There is no question about that.

THE WITNESS: Except sometime, with due respect, your Honor, I think I would be in full agreement with you that it means -- but that is not what it says. It says "lawfully obtained."

THE COURT: Oh, I'm not saying that. I am not saying at this point it doesn't say what you say. But I am saying to Mr. Iannuzzi the question that he asked, of course it is barred if it is not in

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accordance with the Act on and after July 1, 1974.

MR. IANNUZZI: Well, if your Honor please, without in any fashion wishing to mince words, what you just indicated is that it is barred. But I think that there might be a distinction amongst lawyers. In other words, it is barred as to that which is taken after July 1st but it may not be barred before. This is a question I'm trying to get at: Is the law in Canada now changed in procedure that you have, that the court will not accept illegal evidence?

THE COURT: This witness has already testified that it not only means illegally procured evidence after July 1st but also prior to July 1st.

THE WITNESS: And if I may answer once on the question of illegal evidence, it would be the term prima facie illegal evidence. In looking at it like from the point of view like when you are addressing a jury and you are talking about an accomplice, if you have to give cautions regarding an accomplice, you don't have, as a judge or jury, to find a man guilty of being an accomplice, but that he appears to be an accomplice.

THE COURT: Mr. Maranda, I understand that

every time a claim is made I have to suspend the trial and try the gentleman who procured it on the criminal charge and find if he is convicted first. Of course it means there is a showing that there was a violation of law. That's enough.

MR. IANNUZZI: I have no further questions, your Honor.

THE COURT: Anything further?

MR. PUCCIO: Nothing else.

THE COURT: You may step down.

(Witness excused.)

THE COURT: Now we will come back to the Government's case.

MR. PUCCIO: Your Honor, I checked on the Grand Jury panel. When the Grand Jury returned its indictment it was from the October 1, 1973 panel. It was the regular October 1973 Grand Jury and was the first -- the jurors on that Grand Jury were from the first panel selected with the 18-year-olds included, 18 to 21.

THE COURT: Mr. Orgell is in court. I don't know whether you came in for that purpose, Mr. Orgell, but I told Mr. Iannuzzi after speaking with someone from your office, that we included those under the

age of 21 in our panel as of October 1, 1973.

MR. ORGELL: I believe that's right.

THE COURT: Well, there is no question about it, is there?

MR. ORGELL: Well, the master jury wheel was refilled in September, and the qualified jury wheel was used in October of 1973.

MR. PUCCIO: And Mr. Lupiano has verified that.

THE COURT: If Mr. Iannuzzi wants a hearing on that I will give him a hearing.

MR. IANNUZZI: I do, sir.

THE COURT: Until that point, as I recalled it, the Judicial Conference -- there was an advice that as of a certain date we were required to do that, and that was October 1st.

MR. ORGELL: It was an amendment to the jury plan.

THE COURT: An amendment to the jury plan. The jury plan was amended.

MR. PUCCIO: Your Honor, we have not been able to find a copy of that amendment. We have the 1968 --

(Continued on next page.)

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THE COURT: Mr. Puccio, next witness, please.

B E R N A R D C O U T U R E , called as a witness, having been first duly Sworn by the Clerk of the Court, testified as follows:

DIRECT EXAMINATION

BY MR. PUCCIO:

Q Mr. Couture, where do you presently reside?

A I reside presently in Montreal, 1701 Parthenais Street, Montreal, Canada.

Q What is your present occupation?

A Presently I am working as a Commissioner, Investigator for the Quebec Criminal Commission in Montreal.

Q How long have you been so employed?

A I have been employed there since the 5th of June, 1972.

Q And prior to that, what was your occupation?

A Prior to that, between 1965 and 1972, I was assigned by the Deputy Director to analyze all information that came through electronic surveillance, and by electronic surveillance, I mean wiretaps, room bugs, or any electronic surveillance.

Q So between '65 and '72, you were an officer with the Quebec Police Force; is that correct?

A Yes, sir.

Q And during that time period you worked under the direction of Mr. Patenaude?

A Yes.

Q Now, you still work for Mr. Patenaude, do you not?

A Presently I am working for the Quebec Crime Commission, your Honor.

Q You don't have to call me "your Honor."

A Presently I am working for the Police Commission in Quebec for the Crime Commission, and supervised by Mr. Jodoin. He is the supervisor for the investigation there.

Q Now, let me direct your attention to the years 1970 and 1971. During those years, did you have occasion to work on the so-called Vegas Projects within the Quebec Police Force?

A Yes.

Q Tell us generally what the Vegas Projects consisted of.

A The Vegas Projects, first of all, was decided by Mr. Patenaude, and it was to, to do -- well, the main object of the Vegas Project was to close up the gambling house located at 837, Taschereau Boulevard.

Q And during the period of 1970 to 1971, various wiretaps were installed and given various Vegas, installed by

the Quebec Police Force, and given various Vegas numbers; is that correct?

A Yes.

Q Did you have occasion to work in any fashion on these specific wiretaps?

A Yes, as a matter of fact, if I may, can I use my notes?

THE COURT: Sure. If we can mark them for identification. Once you use them, we must mark them to identify them.

THE WITNESS: All right.

THE COURT: Just give us the papers that you say you need to refresh your recollection.

THE WITNESS: There is first a list of Vegas Projects.

THE COURT: Give that to Mr. Puccio.

MR. PUCCIO: This has already been marked. This was prepared in my office.

THE COURT: All right, marked for identification. What number is it?

MR. PUCCIO: 5.

THE COURT: A copy was turned over to the defendants?

MR. PUCCIO: Yes.

MR. IANNUZZI: Yes.

THE COURT: Is that correct?

MR. IANNUZZI: Yes.

THE WITNESS: That is in 1970, I was assigned by Mr. Patenaude to work on Vegas 1-B and PT, which was the Victoria Sporting Club at 837 Taschereau Boulevard.

Q Were you later assigned by Mr. Patenaude to work on Vegas 3, Vegas 5, Vegas 7, Vegas 8, Vegas 9, and Vegas 11 and Vegas 12?

A Yes.

Q Can you tell us, please, what role you played in these nine Vegas Projects?

A My role, sir, in those projects was to analyze all information that came upon those projects.

I mean, I was to record all conversation calls, and I was to analyze the calls by writing it in logs, and if the conversation was adjudged by myself or Mr. Patenaude pertinent, we did a Master, we copied the important conversation. We made a copy.

I mean, we made a dub, a copy of the most important conversations that we got, that we thought important.

Q Can you tell us physically what you did while these nine Vegas Projects were in operation?

A Yes, sir. I did put a tape on the recorder, and

then after a while, take this same tape and listened to the conversation that came out.

Q Well, there has already been testimony that the first Vegas Projects, 1-B and PT had required the keeping of tape recorders in apartments in Montreal; is that your recollection?

A Yes.

Q And that, with respect to the other seven, the tape recording equipment was kept at Police Headquarters; is that correct?

A Yes.

Q What did you do with respect to these tape recorders, if anything?

A Let's see: As far as 1-B and PT --

Q First with respect to 1-B and PT.

A I would go down to a rented place that we had, take the tape and listen, came down to the office and listened to the tape, and made a log of it, and we went to this place approximately two or three times a day, depending upon the information that we would have.

Q Would it be fair to say that you serviced these tape recorders for Vegas 1-B and PT on a regular basis?

A Exactly that, sir.

Q And you were responsible for and did change the

tapes as one tape became filled, and you would replace a new tape; is that correct?

A Yes.

Q Now, what did you do -- Withdrawn.

Can you describe for us the type of recording equipment that was used for Vegas 1-B and PT?

A At 1-B and PT, we used a Roberts recorder, and what we called an automatic starter.

Q How does an automatic starter operate?

A The automatic starter would depend, the starter, the machine will go on when there is a voltage through the recorder. Let us say if someone picks up the line, there is a voltage coming up through the starter and going on to the machine, and then the recorder will start and register the call.

Q So, when someone picks up the phone, the voltage goes through the line on to the automatic starter, and the automatic starter starts the tape recorder?

A Yes.

Q And the recording is made?

A Yes.

Q And you were not present, were you, during the entire period of time when the recordings were made?

A No, sir.

Q For the PT and 1-B Projects; is that correct?

A Yes.

Q But you did service the equipment by replacing used tapes with new tape whenever it was required; is that correct?

A Yes.

THE COURT: Was it new tape, or did you use the old tape that had been used and erased?

THE WITNESS: We used the old tape that had been erased before.

THE COURT: So when it was recorded the second time, did it automatically erase?

THE WITNESS: Yes, sir, but --

THE COURT: Or did you put it on the machine first to erase it?

THE WITNESS: We erased the tape, and then we put on the machine.

THE COURT: Doesn't it, or isn't the erasure automatic when new voices come on, that the old is automatically erased?

THE WITNESS: Yes.

THE COURT: Why did you then first put it through a laundry?

THE WITNESS: That was what we usually did. We usually did that to make sure.

Q So in other words, you would take a used tape from the machine, and take it to your office and listen to it; is that correct?

A Yes, sir.

Q And then you would make up a log, or a summary of conversations that appeared on the tape; is that correct?

A Yes, sir.

Q And then you would take conversations you believed to be important and you recorded them on a dub, or Master tape; is that correct?

A Yes, sir.

Q And then you would use, as you indicate in your responses to Judge Mishler, you would re-use the tape that had already been used?

A Yes.

Q This was done with the PT and the 1-B Projects?

A Yes, sir.

Q Now, did you make a summary of every conversation that appeared on that tape, once you picked up the tape?

A No. As a matter of fact, there was, there was three types of conversations. The first the type, there was unimportant calls that we thought.

Q Can you give us an example?

You listened to all the Vegas 1-B and PT tapes;

is that correct?

A Yes.

Q Every tape that was made with those Projects?

A Yes.

Q You personally listened to them?

A Yes.

Q Can you give us an example of an unimportant call, where a summary would not be made?

A For example, Mr. Dasti called the restaurant, and he orders Chinese food. This would not be logged in, and there wouldn't be any master tape done.

Q So you wouldn't even make a log entry to show that that conversation took place?

A No, sir.

Q And obviously you wouldn't transfer that conversation to a master tape?

A No, sir.

Q Which conversations did you make a log entry of, first, and then which conversations did you make a log entry of and also transfer to a master tape?

A We wouldn't make an entry for the information that we judged of some importance, for example, Mr. Dasti calling Mr. Cotroni, and Cotroni saying, You meet me at such a place and such an hour. This we would write down on a log, but

no master tape.

Q In other words, you would summarize that conversation, but you wouldn't bother taking the actual recording and reproducing it on a master?

A Yes, sir.

THE COURT: Did you record almost every conversation between Mr. Dasti and Mr. Cotroni?

THE WITNESS: No, because sometimes, it is only personal matters, and it is only regards to, or they would call each other to meet together at such and such a place.

Q Would those appear on the log, however?

A They would appear on the log. It was written down, but not recorded.

Q But the actual recording was not transferred to a master?

A No. If we thought that the conversation was not of importance.

Q What type of conversation was not only recorded in a log, but also recorded on the master tape, or the dub?

A It would be recorded and written on the log if we got a conversation, and we thought that the conversation was very important for us.

Q When you say very important for you, what were

investigating at that time?

A At that time we were dealing with, at this particular time, we were dealing with the drug transactions.

Q You mean as it pertains to this particular case?

A Yes.

Q And your interest when you started the Vegas Project was not drug trafficking?

A No, it was to close down the 837, the Victoria Sporting Club.

Q There did come a time when you did record conversations involving narcotics?

A Yes.

Q And these you kept not only summaries of, but also transferred to a master tape; is that correct?

A Yes.

Q Now, would you write up these log entries yourself, personally?

A It depends. At that time, let's say --

Q With respect to 1-B and PT?

A Well, on July, 1970, I was working on this project alone, and after a while, approximately the middle of November or December, I was with Corporal Aube, and he was assigned with me, but at that time Mr. Patenaude told Aube and myself that Aube was not to listen to a tape all alone. He was to listen

to the tape only if I was there, because Mr. Aube was to get familiar with the voices and familiar with the previous conversations that were taken off from the Project 1-B before his coming to the Project.

I am sorry if my English is quite poor, your Honor.

THE COURT: No, it is very good.

Q Well, in other words, Corporal Aube would not listen to conversations himself, you would have to listen to every conversation?

A Yes.

Q As far as making up the logs, did you personally make up each log for, of conversations for 1-B or PT, or were they made up under your direction?

A What happened, Aube could write up, could play the machine, and I could write up the log. We used to have two headsets, and he had one, and I had one. He was writing on the machine, and I was typing. I could write the machine, or he could write down the log.

Q So in many cases it was a joint operation, you and Corporal Aube listening to the recordings and typing up the logs?

A Yes.

Q Was this typing up personally by you?

A The typing was done either by me or Aube, but I was the one who decided what to put on the log.

Q So Corporal Aube was working under your direction?

A Yes.

MR. PUCCIO: May I have these two documents marked?

THE COURT: Yes.

MR. PUCCIO: I will indicate for the record that these have been already handed over to the defense counsel a couple of weeks ago, and to the Court.

THE CLERK: Vegas 1-B marked Government's Exhibit 11 for identification; Summary and Transcript of Conversations.

Another Transcript, Vegas PT, marked Government's Exhibit 12 for identification.

THE COURT: We are going to take a recess at this time, and I will have to suspend at 4:30 this afternoon because I have a sentencing panel. I will expect all counsel in the courtroom at 3:35 P.M.

(After recess.)

THE COURT: Would you please resume the stand, Mr. Couture.

B E R N A R D C O U T U R E , having previously been duly

Sworn by the Clerk of the Court, resumes the stand, and testifies further as follows:

DIRECT EXAMINATION

BY MR. PUCCIO: (continuing)

MR. PUCCIO: Your Honor, I have another witness who came down this afternoon for some short testimony, and I was wondering if I could possibly suspend here on this witness.

THE COURT: Any objection?

MR. IANNUZZI: May I know who it is?

MR. PUCCIO: Maybe I will finish the direct of Mr. Couture and put that witness on then.

MR. IANNUZZI: Whatever is more convenient, your Honor.

MR. PUCCIO: All right.

May I have the last question read?

THE COURT: You had just marked for identification those two volumes.

MR. PUCCIO: Oh, I am sorry.

Q I show you Government's Exhibit 11 and 12 for identification, Mr. Couture, and will you examine those two documents or two pages?

A Yes, this represents copies of logs concerning Vegas 1-B --

Q Which Exhibit would that be, Vegas 1-B?

A This would be Exhibit number 11.

Q And Exhibit number 11 is copies of logs?

A Vegas 1-B concerning the, all conversations, calls, between November 30th, 1970 to January 31, 1971, and the other Exhibit, number 12, is Project Vegas PT, beginning November 30, 1970 to January 31, 1971.

Q And that again is logs and transcripts of conversations?

A Yes.

Q Now, Vegas 1-B was in operation from July 7, 1970 to March 25, 1971; is that correct?

A Yes.

Q But the Exhibit only includes the logs and the transcripts between November 30, 1970 and January 31, 1971?

A Yes, sir.

(continued on next page.)

Q And the Vegas P.T. was in operation from July 7, 1970 to July 23, 1971; is that right?

A Yes, sir.

Q But again the exhibit only includes conversations from November 30, 1972 to January 31, 1971?

A Yes, sir.

Q Now, do those exhibits include the logs that you have already testified concerning, that is, the summaries of conversations that you made up after listening to the various tape recordings?

A Yes, sir.

THE COURT: Have you ever done this before or was this your first project?

THE ITNESS: I did that before, your Honor. I did that between 1965 -- starting in 1965.

THE COURT: When you did it, did you do it in the same way and you would select what conversations you felt were pertinent and then put them on the dub?

THE WITNESS: Except we didn't do any dub at that time.

THE COURT: You kept the original?

THE WITNESS: Neither.

THE COURT: You kept neither, you justkept a summary?

THE WITNESS: A summary, your Honor, except if something happened concerning corruption of a police officer we would keep the original tape.

THE COURT: Only in those instances or was there no hard and fact rule?

THE WITNESS: There weren't any rules as far as dubbing a tape.

THE COURT: Who would decide to keep the tape?

THE WITNESS: At that time I would decide.

Q You prepared the government's Exhibits 11 and 12 at the request of the United States Attorney's office, is that correct?

A Yes, sir.

MR. KLAR: May we ask that the witness be advised to speak up?

THE COURT: Did you hear the last answer?

MR. KLAR: I heard it, but you have to strain to hear.

Q Were any of the -- is there a master tape in existence now which contains conversations recorded through the Vegas 1-B and the Vegas P.T. projects?

A Yes.

Q Where is that master tape located?

A It is presently under the surveillance of the

Quebec police force.

Q Where is it kept?

A 1701 Parthenais Street, in Montreal.

Q Were the conversations that are contained on the master tape, pertaining to Vegas 1-B and P-T, made from the original tape recordings?

A Yes, sir.

Q And who transferred the conversations from the original tapes to the master, which you now have at your headquarters?

A I did, sir, with the assistance of Corporal Aube when he was there.

THE COURT: Do I understand there are two types of recordings, one the dub which contains your version of what was on the tapes, and the other a copy of the actual conversations?

THE WITNESS: Your Honor, there was -- let's say -- I will explain it in my own words.

We take down the tape, we listen to the tape -- the original tape. If I think that the conversation inside that tape is pertinent, we take a new tape which is called a "master tape" and we register the conversation from the original on to the master tape and then the original is destroyed.

THE COURT: Does the master tape contain the actual -- parts of the actual conversation?

THE WITNESS: Most of them contain the entire conversation. The outgoing caller was not registered because at that time we did not think that those tapes were to be brought into Court and for financial reasons, because our financial budget, we did not have let us say enough tapes.

THE COURT: The summaries of what you found were only put in the log, they were never puton the tape?

THE WITNESS: On the log and if we think the conversation was very important, we'd put it on the master tape.

THE COURT: I see.

Q The master tape is commonly referred to as a dub?

A Yes, sir.

Q And the logs are the written summaries?

A Yes, sir.

THE COURT: But the master tape or the dub included only conversations not your paraphrasing of the conversations?

THE WITNESS: The entire conversation.

THE COURT: I see.

Q And your summaries appeared on paper in the formof a log?

A Yes, sir.

Q Now, included in --

THE COURT: This is a lot different than I expected. I thought that what the dub was was Mr. Couture's version of what was on the tape and not the actual conversation.

MR. PUCCIO: That's in the log.

THE COURT: My God, I have less of a problem with that issue than I thought I did.

Q Included in 11 and 12 are word for word transcripts of certain conversations?

A Yes, sir.

Q First of all, by whom were those word for word transcripts made?

A Some were done by myself and some by Corporal Aube.

The English or the French one?

Q Let us take the English word for word transcript, who made those up?

A I did with Corporal Aube.

Q Let's take the conversation with the transcript in French with an English translation, who made those up?

A I did with a member of the RCMP.

Q How about the conversations which were partially in Italian, who made up the translation for those?

A I did.

Q Now, let us turn now to the other 7 Vegas Projects under consideration here, that would be Vegas 3, 5, 7, 8, 9, 11 and 12, were you also responsible for servicing the tape recording equipment in connection with those projects?

A Yes.

Q What type of recording equipment was used?

A For those projects 3, 5, 7, 8, 9, 11 and 12 we used the Royale DeLuxe Recorder and a voice operated relay named Akustomat.

Q In connection with Vegas 1-B and P-T, you used an automatic starter that operated based upon voltage or changes in voltage on the line, is that correct?

A Yes, sir.

Q Now, in connection with the other 7 projects that we are now speaking of, how did the automatic starter operate or how was the tape recording equipment activated?

A Royale DeLuxe was operated by a voice operated relay. As soon as there is a certain noise on the line, the recorder will start. It takes a very small noise on the line.

Q With respect to these 7 projects, would you

remove the original tapes, from the various tape recorders and listen to the tapes and make up logs and transfer what you condered to be important conversations to the master tape?

A Yes, sir.

Q And was that done pretty much in the same fashion as the Vegas P.T. and 1-B were handled by you?

A The same way.

Q Was it done with the assistance of Corporal Aube?

A Yes, sir.

MR. PUCCIO: Your Honor, I would like now --

THE COURT: Of the tapes that were put on the master tapes what percentage of them were you say was a complete conversation and what percentage was part?

THE WITNESS: Are we talking about this period only?

THE COURT: Yes, only that period.

THE WITNESS: Only that period, I'd say approximately 80%.

THE COURT: Full conversations?

THE WITNESS: Yes, sir.

The only thing that would be missing is the outgoing call. For example, let's say if Mr. Dasti called Mexico, we thought that some time if you tried to

get a line to Mexico it would take approximately a few minutes, maybe 2 to 5 minutes. That's why we didn't register that, although we put the number that was called into the log -- the number and let's say if there is a room at such a hotel, it would be written down into the log.

MR. PUCCIO: Your Honor, I would like these other exhibits marked for identification?

THE COURT: Let them be marked.

Q In connection with these other 7 Vegas projects, Mr. Couture, did you listen to every conversation that was recorded?

A Yes, each one of them.

Q You listened to the original tape of every conversation?

A Yes, sir.

Q Did you or Corporal Aube, under your direction, transfer various pertinent conversations or important conversations from the original tape to the master tape?

A I did.

Q Is the master tape for the other 7 projects also located at the Quebec police force headquarters in Montreal?

A Yes, sir.

Q These other exhibits which are being marked were

also prepared by you at the request of the United States Attorney's office or under your direction; is that correct?

A Yes, sir.

Q Do they contain the original --

THE CLERK: Excuse me, Vegas 3 marked for government's Exhibit 13 for identification.

Vegas 5, marked government's Exhibit 14 for identification.

Vegas 7 marked government's Exhibit 15 for identification.

Vegas 8 marked government's Exhibit 16 for identification.

Vegas 9 marked government's Exhibit 17 for identification.

Vegas 11 marked government's Exhibit 18 for identification.

Vegas 12 marked government's Exhibit 19 for identification, all in the hearing.

Q Now, do these other exhibits all contain summaries or as you call them logs of conversations that were made by you or Corporal Aube under your direction?

A Yes, sir.

Q And does it appear in those exhibits word for word the conversations and translations?

A Yes.

Q Were th-y prepared in a similar way to Vegas 1-B and P-T?

A Yes, sir.

Q Now, in those exhibits, Mr. Couture, if there is a word for word transcript of a conversation or an entire conversation, would that mean -- necessarily mean that the master tape is in existence?

A It could be, sir.

Q In any event, you have provided the United States Attorney's office with copies of certain conversations made from the master tapes, which are still in Canada?

A Yes, sir.

MR. PUCCIO: May I have this marked, your Honor?

THE COURT: Yes.

THE CLERK: Tape marked government's Exhibit 24 for identification in the hearing.

Q Would you examine this (shown to witness).

I know you do not have the tape recorder with you, but does that appear to be the tape that you supplied to the United States Attorney's office?

A I did supply this tape, but I was not the one who recorded the conversation on this one. This one was done by Corporal Aube.

Q At your direction?

A Yes, under Mr. Patenaude's direction.

Q You are familiar with that tape?

A Yes, because I did the translation word by word.

Q To the best of your knowledge was that tape made from the master tape?

A Yes, sir.

Q And the master tape in turn was made from the original recordings made during the Vegas project?

A Yes, sir.

Q Was that tape played to Agent Tobin of the Drug Enforcement Administration for the United States Attorney's office?

A Yes, sir.

MR. PUCCIO: Your Honor, I offer these various exhibits into evidence for the purpose of the hearing and I represent to the Court that this government exhibit, Exhibit 20, was duplicated and supplied to all defense attorneys.

Really, simultaneously, when that tape was played to the defendants in our Conference Room, pursuant to your Honor's direction or pursuant to a request made at a pre-trial conference.

THE COURT: Do you agree that is what happened?

MR. KLAR: Yes, your Honor.

MR. POLAKOFF: Yes. I assume that's the tape.

MR. PUCCIO: I will represent that is the tape.

MR. ROSENTHAL: I wasn't there, but if my associates say it is, I have no objection.

THE COURT: Any objection?

All right, mark it.

THE CLERK: Government's Exhibit --

MR. PUCCIO: As I pointed out, these exhibits have been handed over to defense counsel.

MR. IANNUZZI: May we see them for a moment?

THE COURT: Surely.

MR. IANNUZZI: Before they are admitted into evidence.

MR. PUCCIO: I had also asked that this tape recording be played for the Court's consideration at the hearing. We have all heard it. I do not think it would matter if your Honor listened to it in chambers. We have a tape recorder here.

THE COURT: How long would it take?

MR. PUCCIO: About 50 minutes.

We have no objection to your Honor listening to it in Chamers. We have all heard it before. If that is more convenient to your Honor --

THE COURT: We cannot do it now.

MR. PUCCIO: We could set the machine up.

MR. IANNUZZI: I might add for the record, that iI was not here at the time. I was not representing Mr. Cotroni.

MR. PUCCIO: We do expect to have the original master tapes down here for the trial.

THE COURT: That's in French?

MR. PUCCIO: Many of these conversations are in English -- most of them.

THE COURT: I thought most of them were in French?

MR. IANNUZZI: Most of them were between Mr. Oddo and Mr. Dasti. Mr. Oddo is an American.

MR. PUCCIO: I think 5 conversations are in French and part of them in Italian.

MR. IANNUZZI: May I just as the Court --

THE COURT: Incidentally, if Mr. Oddo conducted most of the conversations from this country to Canada, and his actions were severed, how can these defendants assert any violation of Mr. Oddo's rights?

You have no standing.

MR. PUCCIO: I agree.

MR. IANNUZZI: I am not representing Mr. Oddo.

THE COURT: I know. You talked about Mr. Oddo, an American citizen.

(Continued next page.)

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MR. IANNUZZI: That may very well be as far as this defendant is concerned.

I do not venture to speak for him. I am sorry if I have. Mr. Fruchtman and Mr. Rosenthal are here to do that.

I do not think, based upon our discussion this morning, that the defendant Cotroni relinquishes or waives the claim that Title 3 applies because of the fact that these conversations were over the United States telecommunications network.

If in the case or not, I think Title 3 applies because it involves the United States network.

THE COURT: With rights, they are either there or they aren't.

MR. IANNUZZI: Yes.

THE COURT: I thought the claim was, "We are talking to an American citizen,"

MR. IANNUZZI: That's partially the claim.

THE COURT: That would be his right, if he had such a right.

MR. IANNUZZI: Yes.

In connection with the Master tapes that Mr. Puccio has indicated will be made available, I have an expert that I would like to listen to those tapes. Mr.

Puccio has said that these tapes will be available -- those that they consider pertinent, which I do not accept as being exclusive of all the ones that counsel should be permitted to hear. But as far as those are concerned, I suggested to Mr. Puccio, rather than my expert going to Montreal, since they will be available -- all things being equal, we go to trial next week -- maybe my expert can see them at the end of this week?

THE COURT: Are these all of them?

MR. PUCCIO: Yes, it would take an hour.

THE COURT: Some twenty-two conversations?

MR. IANNUZZI: Those are the ones being made available.

THE COURT: Make them available, if his expert comes in.

MR. PUCCIO: Under Mr. Patenaude's supervision.

THE COURT: Certainly.

MR. IANNUZZI: I have no objection to that.

I just wanted to look at these before they are put into evidence. I would like to have some questions with reference to number twenty or twenty-one on the voir dire.

THE COURT: Would you like to suspend with this witness and use your other witness?

MR. IANNUZZI: The only difficulty is, when Mr. Puccio says these logs contain translations and logs, ours were separated.

MR. PUCCIO: For the record, if counsel checks over that which I have turned over, originally we just turned over the French, and then we turned over all of these -- The last package is exactly what is contained in here (Indicating). I will make that represensation that all has been turned over.

MR. IANNUZZI: I just did not know which they were.

THE COURT: Mr. Couture, step down. We will take your next witness.

I assume you will return tomorrow at 10:00 o'clock?

MR. COUTURE: Yes.

M A U R I C E B A R I L , having been first duly Sworn by the Clerk of the Court, testified as follows:

THE CLERK: Please state your full name.

THE WITNESS: Maurice Baril, B-a-r-i-l.

DIRECT EXAMINATION

BY MR. PUCCIO:

Q Mr. Baril, where do you reside?

A Inspector with the Quebec Police Force.

Q You reside in Montreal, Canada?

A I do not. I reside in Capdele Madies.

Q How long have you been so employed?

A Twenty-seven years.

Q During the year 1971, were you involved in an investigation concerning the Victoria Sporting Club?

A I was.

Q That was located at 827 Taschereau Boulevard?

A Yes.

Q In connection with this investigation, was a search warrant obtained for the Victoria Sporting Club?

A Yes.

Q Who was it obtained by?

A By Mr. Dissen (phonetic).

Q Who requested the search warrant?

A One of my Corporals made the complaint against the Victoria Sporting Club.

Q One of your Corporals?

A Yes, Corporal Beauchemin.

Q As a result of the complaint made by this Police Officer, a search warrant was issued?

A It was.

Q And was that on March 17, 1971?

A Correct.

MR. PUCCIO: May I have these two documents marked, please?

THE CLERK: Two documents, marked Government's Exhibits 21 and 22 for identification.

Q I show you Government's Exhibits 21 and 22, will you examine those, please?

Do you recognize those two documents?

A Yes, I do.

Q Can you tell us what they are, please?

A First of all, there's the complaint.

Q Which document is that?

A The one marked 22. The search warrant is marked 21.

Q That's the complaint and search warrant that you just described, pertaining to the Victoria Sporting Club?

A That's correct.

MR. PUCCIO: I offer those documents?

THE COURT: Any objection?

(Shown to counsel.)

MR. IANNUZZI: I have never seen them before.

MR. PUCCIO: May I continue?

THE COURT: Surely.

Q To your knowledge, Mr. Baril, on March 17, 1971, was this search warrant executed at the Victoria Sporting Club

by members of your command?

A It was.

Q And also on that day, was Mr. Frank Dasti arrested?

A He was.

Q Subsequent to his being arrested, was he brought to your office?

A That's correct.

Q Where was your office located at the time?

A At 1701 Parthenais Street, Montreal.

Q Can you tell us what took place, if anything, after Mr. Dasti was brought to your office?

A First of all, I asked him to empty his pockets on my desk. So he did --

MR. KLAR: I will object to any testimony with respect to Mr. Dasti. The date of this warrant is after the date of December, January, 1971, the crucial time in which the tapes were made. I do not see the relevancy of any gambling investigation to the charge laid against Mr. Dasti here.

MR. PUCCIO: Your Honor, if I may, the indictment alleges a Conspiracy between December of 1970 and April 30th of 1971. We are seeking to offer into evidence at the trial personal papers seized from Mr. Dasti by Mr.

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Baril himself, which we would urge would have information which would prove association in this Conspiracy.

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(continued on next page.)

THE COURT: Under our law if the arrest is valid then any material that is seized pursuant to a search incident to the arrest is admissible.

MR. KLAR: Under that situation I would submit that any of the tapes that were made during that period should also be submitted. This is alleged as being the continuance of a conspiracy.

THE COURT: I am only ruling on the admissibility of the items seized. I don't know about anything else. And I won't rule on anything else. This witness is offered, as I understand it, to lay a foundation for the admissibility of items seized at the time of arrest.

MR. PUCCIO: That's correct.

THE COURT: Objection overruled.

MR. IANNUZZI: If your Honor please, may I just as an aside before we lost the thread of the thought, this morning we made claim for certain tapes that Mr. PUccio wished to preclude or circumscribe, December of -- January of 1971. I did intend to bring this point up because I perused the indictment subsequent to that discussion this morning, and inasmuch as the conspiracy is alleged to have continued April 30, 1971, I submit that any and all conversations

up to that point should also be --

THE COURT: Even if they have nothing to do with conspiracy?

MR. IANNUZZI: I suggest at least to the point that defense counsel have the opportunity to hear them.

THE COURT: All right, I have ruled on it already. What has that got to do with the question of the seizure materials incident to the arrest.

MR. IANNUZZI: I just indicated as an aside.

THE COURT: I might also observe that you have no interest in this. If Mr. Dasti's rights have been violated Mr. Cotroni cannot rise to assert Mr. Dasti's rights.

MR. IANNUZZI: I'm not asserting that. I'm just asking with reference to the tapes we discussed this morning, that it should be extended to include all the pertinent conversations during the subsequent period --

THE COURT: I will hear further argument on that when we are not considering this issue. One issue at a time.

MR. IANNUZZI: Very well. Thank you very much.

BY MR. PUCCIO:

Q You said, Mr. Baril, that Mr. Dasti emptied his

pockets, is that correct?

A That is correct, sir.

Q As best you can recall, tell us generally what was in his pockets?

A A wallet and papers all over his pockets, and money.

Q And did you do anything or cause anything to be done at that time with respect to the papers that Mr. Dasti had placed on the desk?

A Yes. I put everything in an envelope, everything that he had in his pockets, and I gave the envelope to my secretary to have photostat copies of all the documents which he had in his pockets.

Q And did there come a time when your secretary delivered photostatic copies of these documents to you?

A Approximately 15 to 20 minutes later after that he left my office. He was booked. And my secretary gave me the envelope which you have in your hand.

MR. PUCCIO: May I have this marked your Honor?

THE COURT: Yes.

MR. PUCCIO: Thank you.

THE CLERK: Envelope with document marked Government's Exhibit 23 for identification in the hearing.

(Document referred to being an envelope containing documents was received and marked Government's Exhibit 23 for identification.)

Q I show you Government's Exhibit 23. Will you examine that batch of documents with the envelope?

A First of all the envelope is marked in French, if I may translate, documents found on the person of Frank Dasti on the 17th of March, 1971. But it is marked on and the search at 837.

THE COURT: And the search at 837?

THE WITNESS: Well, your Honor, 837, it was short for the Victorious Sporting Club. It was the address. There was two names, 837, this Club was known as 837.

THE COURT: And these documents were then in 837?

THE WITNESS: No sir. On his person.

Q Now, would you look through the documents please and tell us if those are the photocopies of the documents taken from Mr. Dasti that your secretary made?

A I will explain everything on these papers.

Q No. Why don't you look through those yourself and let us know if those are the photocopies that were made by your secretary?

(Witness examines documents)

Q (Continuing) Now, were those copies of Mr. Dasti's documents that were made by your secretary on March 17, 1971?

A They are.

Q What if anything happened to the original documents that Mr. Dasti took out of his pockets on that day?

A It has been given to him on his release.

Q In other words, the documents were returned to him when he was released?

A Yes, that is right.

Q So that the originals were left with Mr. Dasti and you kept copies?

A That is correct.

Q Now, all of these documents were found on Mr. Dasti's person, is that right?

A Yes sir.

MR. PUCCIO: Your Honor, I offer the documents, they being exhibit 23, and the search -- complaint and search warrant Exhibits 21 and 22 into evidence.

THE COURT: I haven't passed on the admissibility. For the hearing.

MR. PUCCIO: Yes, for the hearing.

THE CLERK: So marked Government's 21, 22 and 23

which are received in evidence in the hearing.

(Documents referred to received and marked Government's 21, 22 and 23 in evidence respectively at the hearing.)

MR. IANNUZZI: That is for identification, is it not?

THE COURT: There are two ways of doing it, considering it for identification on the trial or considering it marked in evidence at the hearing.

MR. IANNUZZI: May we have an opportunity to look at them.

THE COURT: Surely.

MR. PUCCIO: I will supply copies.

MR. IANNUZZI: Well, I don't mean the warrants. I'm talking about 23.

MR. PUCCIO: I will supply copies this afternoon of all the documents.

MR. KLAR: May we have an opportunity to look at them?

THE COURT: I will assume you object to all of them/. Objection overruled.

MR. PUCCIO: I ask the cross-examination of Mr. Baril this afternoon so he can be completed today.

THE COURT: I hope so. Have you completed?

MR. PUCCIO: Yes, I have no more questions.

THE COURT: All right, Mr. Klar, cross-examination.

MR. KLAR: May we have an opportunity to look at these, sir?

THE COURT: Of course you will. Now?

MR. IANNUZZI: Yes.

THE COURT: What has that got to do with whether this search was reasonable or incident to the arrest, no matter what he found on him. I will decide relevancy at another time. Mr. Puccio says that Mr. Baril wants to get back to Canada.

MR. KLAR: Well, we may want to have a voir dire on this. I don't know what papers are in there or how they read.

THE COURT: He says everything was found on Mr. Dasti.

MR. KLAR: These were not found. Allegedly the originals were found. The originals were returned.

THE COURT: Yes, that is what he said.

MR. KLAR: I would like an opportunity to look at these perhaps for the purpose of voir dire. I don't know what they contain. And if I get them this afternoon --

THE COURT: Let's assume for these purposes they contain incriminating information. Why do you have to look at them before you cross-examine this witness.

MR. ROSENTHAL: If I look at them I may decide there is no cross-examination that I need.

MR. PUCCIO: Your Honor, I would urge that Mr. Klar is the only one that has standing.

THE COURT: I don't know whether you have the right to cross-examine. I usually allow it only because there are statements sometimes involving the other side. I'll give you an opportunity to ring your hands and claim that the Bruten problem and so forth.

MR. KLAR: If I get these this afternoon and let's assume Mr. Baril goes back to Canada, will he be back here tomorrow morning?

THE COURT: He wants to go back to Canada.

MR. KLAR: I understand. That's why I'm asking for a few moments to take a look at them.

MR. PUCCIO: I will give copies to defense counsel.

THE COURT: They want to look at them before they cross-examine.

MR. PUCCIO: If they have any questions after they look at them we can recall Mr. Baril.

THE COURT: I can't see what the substance has to do with the seizure. If they are irrelevant they won't be admitted for trial. Assume it's relevant and assume it's incriminating.

MR. PUCCIO: I might point out to your Honor that we do not expect to offer all of these. There are a couple there that are pertinent to the trial. The other is we will not offer.

THE COURT: Why don't you tell them what you think is pertinent.

MR. PUCCIO: Your Honor, at this point I believe there are two documents which are immediately relevant. Now I am not foreclosing the possibility, I might offer others.

THE COURT: I can't say the substance has anything to do with the admissibility of evidence. I say for these purposes you can assume it is incriminating and relevant. You can even assume it incriminates the other two defendants. But you can just cross-examine on the reasonableness of the search.

MR. KLAR: You will give us an opportunity to

cross-examine. Your Honor was going to break at 4:30 today.

THE COURT: We'll have to go later because we haven't started yet. I want to get him back to Canada tonight.

MR. KLAR: Since we have an opportunity I will reserve the voir dire.

THE CLERK: Two documents coming out of 23 in evidence at the hearing are marked Exhibits 23-a and 23-b in evidence into the hearing.

(Documents referred to were received and marked government's Exhibits 23a and 23b in evidence in the hearing .)

MR. KLAR: Your Honor, I will withhold examination until my cross-examination, your Honor.

THE COURT: He says he is finished.

MR. KLAR: I am sorry.

THE COURT: Why don't you mark the documents that Mr. Puccio said he was sure of.

MR. PUCCIO: We just did.

THE CLERK: 23a and 23b.

THE COURT: No, Mr. Puccio is not limiting himself to those documents. At this time he believes that these are the two. There may be more.

CROSS-EXAMINATION

BY MR. KLAR:

Q Mr. Baril, who was present when Mr. Dasti was searched?

A In my office?

Q Yes.

A There was an agent with me.

Q What was his name?

A I don't recall his name.

Q Was your secretary present?

A She was in her office next door.

(Continued next page.)

Q What is your secretary's name?

A That's my ex-secretary.

Q Your ex-secretary's name.

A (No response.)

Q Excuse me. Do you recall your ex-secretary's name?

A I do remember only her middle name.

Q What is her middle name?

A Lise.

Q Do you recall, Mr. Baril, how many documents were taken from Mr. Dasti?

A Everything that you have in front of you, sir, all the contents of the envelope.

Q Does it include the search warrant and the complaint?

A You do have them. Everything that was in the envelope.

Q These are the copies now, you recall?

A Yes.

Q All the copies that are contained in the envelope were taken off Mr. Dasti?

A Well, the originals of course.

Q Did you mark in any way by number each of these documents?

A I did not.

Q Did the agent who was present mark them?

A The agent, no, not at all. The agent who was present didn't say a word. He didn't say nothing. He was there only to guard the prisoner.

Q And did you have an opportunity after you gave the document to your secretary to photostat, to look through each of those?

A Of course. Before giving the original documents to my secretary I looked all over.

Q But you had not counted how many documents you gave her, is that correct?

A No, I did not.

Q So you don't know in effect how many you got back?

A Everything you have in the envelopes are the original copies of every paper that he had -- that Mr. Dasti had in his pockets.

Q Yes. But if your secretary had mistakenly failed to Xerox one document you would have no way of knowing that because you did not mark each of the documents; is that correct?

A Yes, that's correct.

Q And if she added a particular document by

mistake, one photocopy, you would have no way of knowing --

MR. PUCCIO: I object, your Honor, to this line of questioning because it is not relevant to the issue of whether or not a search was reasonable. It goes to the weight to be given to copies rather than the originals.

THE COURT: I will allow it.

Q How many other people were arrested with Mr. Dasti?

A Forty-nine altogether, sir.

Q Was each of these people required to submit to a search similar to Mr. Dasti?

A No, sir. An ordinary search.

Q Was Mr. Dasti's considered an ordinary search?

A No, sir.

Q Were these other individuals --

MR. KAR: Withdrawn.

Q Were documents found on any other individuals?

A Yes.

Q Were Xerox copies made of these documents?

A Yes, sir.

Q Were the originals of these documents given to your secretary to Xerox also?

A No, I took care of Mr. Dasti myself. And some

of my men took care of some of the men. There was 49 altogether. But there was four accused, including Mr. Dasti, of keeping a gambling house. The others were found in, accused to be found --

THE COURT: Do you mean they were players?

THE WITNESS: It was a gambling house.

THE COURT: I say the others were just players?

THE WITNESS: Players, that is right.

Q Where were these Xerox copies made of these other individuals?

A Do you mean the machine?

Q Yes. Where was the machine located?

A On the fourth floor.

Q Is that the same machine that was used to Xerox copies of Mr. Dasti's papers and documents?

A I don't know.

Q That means it is possible it could have been the same machine?

A I don't know.

Q Do you know if your secretary had in any way used the same Xerox machine --

A I don't know.

MR. KAR: I haven't finished the question yet. Give me a chance to finish the question.

Q Do you know whether your secretary had access to the machine on the third floor?

A I wasn't there. I mean I didn't follow my secretary to make the photostatic copies.

Q Does she have a Xerox machine in her office?

A No, sir.

Q On what floor is her office located?

A At that time it was on the second floor.

Q Is there a Xerox machine on the second floor?

A No, sir.

Q Is there a Xerox machine on the first floor?

A That I don't know.

Q But there was a Xerox machine on the third floor?

A Yes.

Q So it is quite possible that your secretary could have gone to the third floor to Xerox the documents at the same time these other documents were Xeroxed or shortly after that?

A I doubt it because it wasn't -- when she went to photostat the original copies of Mr. Dasti's documents all the other prisoners were in another room.

Q On the same floor that Mr. Dasti was?

A On the same floor but in separate rooms.

Q But you don't know where she went because you

didn't go with her, is that correct?

A Yes.

Q So it is possible she did go to the third floor?

A That I don't know, sir. We got Xerox copies all over the place.

Q Xerox machines all over the place or Xerox copies?

A Xerox machines.

Q All over the place?

A Yes.

Q But not on your floor?

A No.

Q Or the first floor?

A I don't know.

Q Now, with respect to the documents that were Xeroxed from these other individuals, did you have an opportunity to look at them?

A Yes.

Q Did you give the originals back to him?

A Not myself.

Q Did someone inyour command give the originals back?

A Yes.

Q Did you have an opportunity to identify each of

the documents taken from the other individuals?

A The accused there being found -- my principal accused, there were four including Mr. Dasti.

Q And you examined the documents of the other three and Mr. Dasti, is that correct?

A I did.

Q And did you put these copies also in an envelope?

A I did.

Q And were these envelopes marked in a particular way?

A As you see, it is marked -- I did translate it in English. It is marked in French.

Q Is this the original envelope that you placed the copies in?

A That's correct, sir.

Q Each of the other three accused had similar envelopes?

A Yes, sir.

(Continued on next page.)

M:GA

Q But you wouldn't know in that instance whether or not documents were left out or misplaced in those envelopes, because you didn't mark the originals?

MR. PUCCIO: Objection.

THE COURT: Overruled.

A I didn't personally attend to those envelopes. I only made, as I said, took over Mr. Dasti's documents personally.

Q Now, take a look at this particular document.

Do you recognize that particular document?

A Yes.

Q And any distinguishing marks on there?

A No.

Q Can you be sure that that document was Frank Dasti's, and not one of the other three accused?

A Because I know, because when my secretary gave me the envelope which you have, that was all the same, and I kept them personally in my private file.

Q Take a look at this document.

Can you identify that and tell us what it is?

A Of course. There is a bordero, and I don't know how to say it in English, but it is an account, Dasti and Ziorio, and that is the account, the bank account, and a deposit of $300.

Q Now, there seems to be two separate photos on that page.

Does this reproduction, is it exactly the same as the original?

A Of course.

Q Or did you put two together on one page.

A We have more than -- You have some documents which, they were business cards, credit cards, receipts, bank checks, a summons from the Court, envelopes, and addressed to Mr. Dasti. You have quite a few envelopes addressed to his name.

Q You have the copies of the other documents from the other accused with you today, do you?

A I do not.

Q Do you have them in your office?

A No.

THE COURT: Is it important for you to get back to Canada tonight?

THE WITNESS: I have a reservation, but I can cancel it.

THE COURT: My thought is to suspend, and when Mr. Baril is ready to testify in the trial, we can continue this. This can go on for a long time. I don't know that I will allow Mr. Iannuzzi or Mr. Rosenthal to

cross-examine.

MR. KLAR: May I ask that he be instructed to bring the other envelopes containing the documents of the other individuals?

MR. PUCCIO: I object.

THE COURT: I don't know why.

MR. PUCCIO: What is the relevancy?

MR. KLAR: As to the purpose of --

THE COURT: It might prove these documents belong to the other fellows?

MR. KLAR: Perhaps.

THE COURT: How would that do it?

MR. KLAR: I don't know until I see the others.

THE WITNESS: I am sorry, but you won't see the others.

MR. KLAR: Why?

THE WITNESS: I don't have them.

MR. KLAR: Were they destroyed?

THE WITNESS: Probably destroyed. We don't have them.

THE COURT: Mr. Dasti did not come back to you and say you gave me too many documents, or you gave me too few, did he?

THE WITNESS: He did not, no, sir.

THE COURT: I cannot spend any more time, but if counsel want to spend any more time, it can be at another time. It can be at the trial.

When you expect to use Mr. Baril as a witness, then you offer him and remind me this is a continued cross-examination.

MR. PUCCIO: All right.

THE COURT: I frankly cannot see how any examination of the contents of the documents is relevant to this examination. The only question is, Was this a lawful arrest, and was this a reasonable search.

I am assuming that our law is about the same as Canada's on that, and that if it is not, we have the same question as to whether it is admissible in Canada, and as to whether it is admissible here; but I will assume it is about the same. Here, the only question is, Is the arrest lawful, Is the search reasonable, and if the answer to both those questions is Yes, then the subsidiary question, Are the documents relevant to the issues.

MR. KLAR: And the other question is, These were not originals.

THE COURT: Mr. Klar, he has accounted for the disappearance of the originals. Your man has it. Do

you want me to ask for production of the originals, or will you claim the Fifth Amendment right against it?

MR. KLAR: We still have the problem that he is not accounting for the fact that these are all the documents.

THE COURT: That is enough for me.

I will make a finding that the originals of all these documents were returned to Mr. Dasti upon his release.

I will allow these copies because the witness says these are Xerox copies of the originals he returned.

MR. KLAR: Mr. Dasti would have no way of knowing what was included in the envelope.

THE COURT: You know, the law is logical.

MR. KLAR: I understand that.

THE COURT: What do you mean, he wouldn't know?

The proof is he received the documents. If Mr. Dasti disagrees with it, let him take the stand and deny it.

THE DEFENDANT DASTI: I will, your Honor.

THE COURT: All right, you talk to your lawyer, and he will tell you the risks involved. You cannot come in and say, How did Mr. Dasti know? The proof is that he got the documents.

If your man takes the stand and denies it, I will have a fact question, and I will decide it.

MR. IANNUZZI: Would your Honor permit two questions now?

MR. KLAR: I have no more questions of the witness.

MR. IANNUZZI: I thought we might finish with the witness.

THE COURT: No, no, we never will.

This is continued until the day of the trial, and you call the witness back, and we will take his testimony.

All right.

10:00 o'clock tomorrow morning, Gentlemen.

* * *

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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

-against-

FRANK COTRONI, FRANK DASTI and PAUL ODDO,

Defendants.

73-CR-898

----------x

United States Courthouse
Brooklyn, New York

December 31, 1974
10:00 o'clock A.M.

B e f o r e :

HONORABLE JACOB MISHLER, Chief U.S.D.J.

I hereby certify that the foregoing is a true and accurate transcript from my stenographic notes in this proceeding.

HENRY SHAPIRO
OFFICIAL COURT REPORTER
U.S. District Court

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Appearances:

DAVID C. TRAGER, ESQ.
United States Attorney
for the Eastern District of New York

BY: THOMAS PUCCIO, ESQ.
Assistant U.S. Attorney

JOHN N. IANNUZZI, ESQ.
Attorney for Defendant Cotroni

MICHAEL KLAR, ESQ.
Attorney for Defendant Dasti

GERALD ROSENTHAL, ESQ.
Attorney for Defendant Oddo

THE COURT: Is Mr. Baril here?

MR.PUCCIO: Yes, I asked him to come back for a few more questions and complete any cross-examination.

M A U R I C E B A R I L , called as a witness herein, having been previously duly sworn by the Clerk of the Court, resumed the stand and testified further as follows:

THE COURT: Did you complete your cross-examination, Mr. Klar?

MR. KLAR: I believe I have one or two more questions.

MR. PUCCIO: I will let Mr. Klar continue.

MR. KLAR: I have no further questions at this time.

MR. IANNUZZI: Are we permitted to cross-examine?

THE COURT: What is it on?

MR. IANNUZZI: The documents themselves -- I understand what your Honor says. If there was a proper search warrant and if these were found on the person pursuant to a lawful arrest, therefore the papers would be proper.

The question only, are these the papers that

were found on the person. In other words, whether the papers found on the person are permitted is one thing, but the question are these in fact the papers is a different story and since these relate -- at least two of them that Mr. Puccio picked out -- relate to Mr. Cotroni. I would say that Mr. Cotroni has standing.

THE COURT: I don't think you have standing but go ahead, cross-examine.

It will come through Mr. Klar anyway. So you might as well do it anyway.

CROSS-EXAMINATION

BY MR. IANNUZZI:

Q Mr. Baril, you indicated -- I am referring to Exhibit 23 and 23 A and 23B which are contained within 23. You indicated, sir, that you have a recollection that these are the documents that were taken from Mr. Dasti for the reason that these were the documents in this envelope that were given back to you after being photocopied; is that correct?

A That's right, but yesterday I mentioned that I asked Mr. Dasti to empty his pockets on my desk and, of course, during his emptying his pockets, I was looking at his documents, wallet and so on.

I remember mentioning to him that he had U. S. Sweepstake --

Q Lottery tickets.

A I told him that it was illegal for a Canadian to have that in his possession and I make a joke with him. I said that I am going to charge him when I knew it was a chicken feed case, having U. S. lotterh tickets in his possession.

Q Yes, sir.

May I see those again for a moment?

A Surely.

Q In looking through -- looking at the papers that Mr. Dasti took out, the original, do you have a recollection of the documents that he took out?

A Of course.

Q Do you recall each and all of them?

A Well, look, I looked at every paper, of course, everything that he had.

Q I understand that.

In looking at these documents there were checks and deposit slips, etc.?

A That's right.

Q Did you make any inventory of these documents?

A I did not.

Q Did you make any notation as to notations that were written on the back or front of these?

A Not at that moment.

Q Right.

Did you make any determination as to -- withdrawn.

A lot of these documents were business cards in addition to the deposit slips, etc.?

A Correct.

Q And a lot of them had pencil notation or phone numbers or addresses, etc.?

A That's right, sir.

Q Did you make any notation as to the information that was-- the foreign information contained in those documents?

A Later on I did.

Q That would be after you got the photostats back?

A And the original copies.

Q The original?

A Yes.

Q Do you have a recollection of each and every -- withdrawn.

You went over these papers yesterday when you

were asked if you could identify them?

A I beg your pardon. I went through these papers -- I had them in my possession since the 17th of March '71.

Q Yes, sir.

A So I did look quite a few times at these documents.

Q Not the original, the photostats.

A Of course because I gave everything to Mr. Dasti.

Q Do you have an independent recollection of all of the original documents other than reliance on this envelope of photostats?

A As I said I looked at them quite a few times.

Q The originals?

A Well, the first day I kept -- when he was in jail -- in the cell, because he had his envelope only the day after.

Q Is there anything that distinguishes these documents from the other documents taken from the other three principal suspects?

A First of all I didn't have anything to do with the three other ones.

Q What I suggest, whether you had to do with them

or not, these photostats, is there any way to distinguish these photostats other than the fact that they were contained in the envelope, is there anything to distinguish these as having come from Mr. Dasti's pocket?

A I am quite sure that everything that I seized in his pockets are exactly the same thing that you have in front of you, sir.

Q On what do you rely --

A On my memory first of all and as I said, these documents were important to us and I looked -- when he step out of my office I look at each -- everything that he had.

Q I show you these two documents, 23B and 23A, and I ask you if you specifically recall the original?

A Of course.

Q When you say you specifically recall the original can you indicate what was contained on the original?

A Exactly what you have there.

Q What was that?

A Numbers.

Q What number?

A Oh, I'm sorry --

MR. PUCCIO: Objection, your Honor.

Q You have looked at these many times since --

THE COURT: Objection sustained.

It's argumentative.

Q Do you know who wrote these numbers?

MR. PUCCIO: Objection to that as being irrelevant.

THE COURT: Overruled.

Q Do you know who wrote these numbers?

A May I answer?

THE COURT: Yes.

A No, I don't know.

Q Do you know when they were written?

A No, sir.

Q Do you know if anybody made any notations on the original that were taken from Mr. Dasti while they were out of your possession being Xeroxed or carried or transported by your secretary or other personnel in the Police Department?

A I am sorry, I didn't understand the question. Would you repeat it, please.

THE COURT: You don't know that your secretary might have put these numbers on the original?

THE WITNESS: I am quite sure that she didn't.

THE COURT: You don't know?

THE WITNESS: No.

THE COURT: All right, all that is possible.

BY MR. IANNUZZI:

Q Do you know if there was anyone else that did the photostating of these documents, in other words, did your secretary perhaps give them to another secretary to do?

A That I doubt.

Q You don't know?

A Well, I ordered my secretary to make photostat copies. I gave her the envelope --

Q And she gave it back to you?

A Of course, she did.

Q Between the time she left and the time she came back you don't know what happened to those documents?

A I didn't follow her.

Q You don't know what happened to these documents in your absence?

A I know one thing when they came back with the original and the copy, I checked the both of them, that's for sure.

THE COURT: You checked the copy with the original?

THE WITNESS: I did.

THE COURT: You found them identical.

THE WITNESS: Of course, on my desk.

Q When you did that, that was after she had them --

A Of course.

(continued next page.)

CROSS-EXAMINATION

BY MR. IANNUZZI: (Cont'd.)

THE COURT: I will consider the possibility that his secretary, for some strange reason, I can't think of, but you may think of, put the notation on that you find. Do you know your secretary's handwriting?

THE WITNESS: Of course I do.

THE COURT: Does that look like her handwriting?

THE WITNESS: Not at all.

THE COURT: It could only be a girlfriend that was hidden in the back recesses of the Xerox room that put the notation on them.

MR. IANNUZZI: I have no idea who touched them. All I'm suggesting is that the integrity of the evidence cannot be testified to by this witness.

THE COURT: The law deals with reasonableness and not impossibility.

MR. IANNUZZI: When this went to the Xerox room with 49 people's other papers --

THE COURT: I would find without hesitation that this was the condition of the documents when this witness found them on Mr. Dasti and that he

found all these documents on Mr. Dasti.

MR. IANNUZZI: I would except to your Honor's termination.

THE COURT: I haven't made that termination. I say on this evidence. I indicated yesterday if there is any other evidence, it should be produced by the defendants.

MR. IANNUZZI: I don't see how the defendants could produce evidence put in the position of this witness.

THE COURT: Were you there?

MR. IANNUZZI: Certainly not, sir.

THE COURT: How do you know?

MR. IANNUZZI: I don't know. That's the point.

THE COURT: Why don't you ask Mr. Dasti. He might tell you.

MR. IANNUZZI: If your Honor please, it's not a question of what the original --

THE COURT: Do you have any further cross?

MR. IANNUZZI: I would like to confer with co-counsel.

THE COURT: Do that please.

(Pause)

MR. IANNUZZI: No further questions.

THE COURT: Anything Mr. Rosenthal?

MR. ROSENTHAL: No, your Honor.

THE COURT: Mr. Puccio?

MR. PUCCIO: Yes.

REDIRECT EXAMINATION

BY MR. PUCCIO:

Q You indicated yesterday that Mr. Dasti was arrested on March 17, '71?

A That's correct.

Q To your knowledge, was he arrested on the premises of the Victoria Sporting Club?

A Yes.

Q Was he charged formally after being arrested?

A Yes, sir.

Q Do you recall what he was charged with?

A Keeping a gambling house.

MR. PUCCIO: I have no further questions, your Honor.

THE COURT: Anything further?

MR. IANNUZZI: Yes, sir.

THE COURT: Mr. Klar, first. It's his search that is involved. What do you want marked, Mr. Puccio?

MR. PUCCIO: I have a copy of Martin's Criminal Code of Canada. I should say a copy of various sections and I would like it marked for identification. I could produce a certified copy. I draw the Court's attention to Section 185, Paragraphs 1 and 2. Paragraph 1 states, "Everyone who keeps a common gambling house or betting house is guilty of indictable offense and is liable to imprisonment for two years" and Sub-section 2 indicates everyone who is found without lawful excuse in a common gambling house or common betting house is guilty of an offense and punishable on some requisition.

THE CLERK: Marked for Government's Exhibit No. 24.

RECROSS-EXAMINATION

BY MR. KLAR:

Q With respect to this particular arrest, what was the disposition of this matter if any?

THE COURT: Quite immaterial, but I will allow it. It was dismissed.

Q I asked what the disposition was.

THE COURT: You know it was dismissed. I will allow it.

Q If you know?

A Well, Mr. Dasti was charged. He never had his trial because he got arrested in the United States since then.

Q Let me ask you this: How long have you been involved in the investigation of Mr. Dasti in relation to these gambling charges?

A Since I first started in the Montreal squad --

Q Which was when?

A In July of '70.

Q July 1970 through at least March of 1971, you were involved in investigating the Victoria Sporting Club, is that correct?

A That's correct.

Q During that, do you know of any wiretaps having been placed at the Victoria Sporting Club?

A Yes.

Q How many wiretaps were placed at the Victoria Sporting Club between July '70 and March of '71?

A I don't know.

Q Did you have an opportunity during that period to see -- withdrawn. Did you have an opportunity during that opportunity to listen to any tape recordings of taps on the phone or phones at the Victoria Sporting Club?

A Yes.

Q On how many occasions did you have an opportunity

to listen to these tapes?

A It's hard to say.

Q One, two, ten occasions?

A It's very hard to -- because I had many cases --

Q You seem to recall Mr. Dasti quite well. You took personal control of his case.

A I did so because it was a special case.

Q I am asking you on how many occasions did you listen to these tapes, that was a special case, you should know.

A Quite a few.

Q Quite a few?

A Yes.

Q Who was present when you listened to these tapes, were you alone or was someone else --

A Well, I had the occasion to listen to some tapes.

Q Did you recognize the voice on those tapes as being Mr. Dasti's?

A Yes, sir.

Q Where did you listen to these tapes?

A At the headquarters of the Quebec Police Force in Montreal.

Q I ask you again, who was present, when you

listened to those tapes, if anyone was present other than yourself?

A Sometimes I was all by myself. I mean there was some agent around.

Q Did you seek the authorization of anyone in particular at the headquarters in order to listen to these tapes?

A Mr. Patenaude.

Q Did you have his authorization on each and every occasion to listen to these tapes?

A I had -- it all depends when I was concerned -- because I was looking -- my job was the illegal gambling.

(Continued on next page.)

Q Now, did you have to sign in to some book any time you came into headquarters to listen and sign out after you were through?

A No, sir.

Q You had the freedom to come and go and listen to the tapes?

A No, I didn't have any -- Mr. Patenaude at that time, was in charge of the Special Branch -- Special Investigation, and as I said, I had permission to listen from the thing that I was concerned with.

Q Were any of your men -- those men specifically assigned to your Division --

A They did not have permission.

Q Let me finish.

Were any of your men assigned to record any conversations at the Victoria Sporting Club, or did they in any way assist in the placing of any equipment at the Victoria Sporting Club?

A No, sir, my men did not have anything to do with the wiretap.

Q Did you also have an opportunity to read the logs or the summaries of the transcripts, from time to time?

A I did, yes.

Q Were those logs or summaries made available to

you for you to keep in your office?

A No, I didn't keep them in my office.

Q Where were they kept?

A In Mr. Patenaude's office.

MR. KLAR: I have no further questions.

THE COURT: Anything further?

MR. IANNUZZI: Yes.

RECROSS EXAMINATION

BY MR. IANNUZZI:

Q Mr. Baril, had you known Mr. Dasti personally before March 17?

A No, sir.

Q Had you ever met him personally?

A Before March 17th?

Q March 17th.

A No, I did not, but I knew --

Q Who he was?

A Who he was and I first saw some pictures of him, and I saw him --

Q You saw him around Montreal?

A I saw him, because I personally watched his gambling house.

Q In that you saw him and his picture, I take it, you never had any conversation with him prior to the arrest?

A 1224

A No, sir.

Q When you indicated that you recognized Mr. Dasti's voice on the tape, you had never heard Mr. Dasti's voice before you heard it on the tape?

A Someone told me it was his voice.

Q Yes.

A I listened when he was called Dasti or Frank.

Q You assumed it was his voice, because someone told you it was?

A Yes, sir.

Q You suspected that Dasti was a gambler?

A That's for sure.

Q Was he a small-time gambler or a big-time gambler?

A Big-time.

Q Would you have considered him the biggest gambler in Montreal?

A Not the biggest one, but one of the biggest.

Q This activity was illegal, I take it?

A Yes, sir.

Q As a matter of fact, that's why this was a special case, becuase of the size of the gambling operation that you thought he ran?

A Yes, sir.

Q And in listening to conversations over the

A 1225

tapes, were those conversations out and out conversations about gambling?

In other words, did they talk about people placing bets and taking bets, and money, or did they talk in terms that were intended to mislead you perhaps?

A I don't understand the question.

THE COURT: Were code names used or code words used?

Was the conversation "I bet so much money on a horse," or would they say --

THE WITNESS: I am sorry, it wasn't a bookie joint. It was strictly gambling, playing cards and dice.

THE COURT: In discussing the type of games, did they use the name of the game, or a code word?

THE WITNESS: The name of the game, we call it Barbott.

It is the name of a fish.

THE COURT: Did they use that name?

THE WITNESS: There was not much conversation on the game itself.

Q As a matter of fact, when these people spoke on the telephone, when you listened to the conversation --

A 1226

withdrawn.

This Victoria Sporting Club, didn't have dice playing, did it?

A I am sorry, the name of the game was Belbo. It is cards.

Q Didn't the Victoria Sporting Club have a license?

A No, sir.

Q To have card games?

A No, sir, there is no license allowed.

Q Wasn't it a social --

A A social charter.

Q It had a social charter for social purposes, people getting together to play card games?

A Yes, sir.

Q Did they pay so much per month to have that permission?

A We proved the contrary.

Q Did you listen to any conversations between December 30, 1970 and January 30, 1971?

A I did.

THE COURT: Is that the listening or the date of the conversation?

MR. IANNUZZI: Well, the date -- I will try and clear that up.

A 1227

Q When you listened to these tapes, would these tapes be immediately after they were taken, if you know, or was it sometime afterwards?

A It's very difficult -- there was some time afterwards.

Q And some during that period?

A It's very hard to say.

Q And of course, you saw some logs, and the logs had dates on them?

A Yes, sir.

Q You are familiar with this case and the dates involved in this case, correct?

A Yes, sir.

Q Have you read the logs relative to the dates in this case?

A No, sir.

Q By the way, the place where these tapes were kept, was it a room that had to be unlocked for you by the Special Forensic Evidence Unit?

A Forensic Evidence?

Q Mr. Patenaud's organization?

A Before getting into Mr. Patenaud's office, there is a special device -- a special lock. It is not anybody who can cross over.

A 1228

Q Right, but once inside the office, the place where the tapes were kept, was it a special room or desk?

A I never went into that room.

Q How did you get the tape?

A In some office -- there's a special device to listen to them.

Q Are you saying that you could go in to a room, and press a button and listen to the tape?

A Well, there were some tape recorders there.

Q How would you get the tapes that you wanted on the tape recorder?

In other words, would you go get the tape?

A No, sir. I didn't have anything to do with the technique.

Q When you went in, did you tell somebody, "I want to listen to a tape?"

A I will ask Mr. Patenaud's permission.

Q I understand you had his permission, but the physical going and listening, did you go --

A I would have been called by somebody to listen to some tapes.

Q You recollect this situation and you recollect going to Mr. Patenaud's office.

The question is on the occasions when you didn't get

A 1229

a call to listen to a particular conversation, did you go there to listen, of your own will, without haveing been called on any occasion?

A No, sir.

Q So every time you went downthere, you were called?

A Usually, yes.

Q By whom?

A By Mr. Patenaud -- especially by Mr. Patenaud.

Q In listening to these tapes, were there occasions when on the tapes, the people would be talking about suits, or rent or other things, other than gambling?

A Of course, there was some conversation outside of gambling.

Q When they were talking about suits or rents, were you able to determine that they were not in fact, using code words for gambling?

A I am sorry?

MR. PUCCIO: I object.

THE COURT: I will allow him to answer.

It has nothing to do with this hearing. This is full pre-trial examination by the defendants.

MR. PUCCIO: They already have the tapes. I object to getting interpretations of tapes.

THE COURT: Answer the question.

A 1230

THE WITNESS: I was not interested -- as I said, I was in charge of the Morality Squad, and I was involved in gambling houses, prostitution, narcotics, and so on. So the other cases I did not have anything to do with them.

Q Very well.

When you were involved in narcotics, prostitution, gambling and something else, had you, on occasion, come across defendants in your experience, who did not wish to have a patrolman know that they were involved in illegal activities, that you were investigating?

A You will have to repeat that.

Q On occasions, have you come across defendants who were not happy to allow you to know their illegal activities?

A I am sorry, I will need -- I don't understand the question.

Q I will rephrase it --

THE COURT: Did you ever get a happy defendant that you arrested?

MR. IANNUZZI: Wants to know if you had anyone that was happy when arrested?

THE WITNESS: Usually, they are unhappy.

Q In connection with their activities, have you

A 1231

had experience with defendants that did not want you to know that they were involved in illegal activities?

MR. PUCCIO: I object.

THE COURT: May I have the question?

(Question read).

THE COURT: Objection sustained.

Q Have you had experience with defendants that attempted to cover up their illegal activities?

MR. PUCCIO: Same objection.

THE COURT: Objection sustained.

Q In listening to these conversations, sir, is there one conversation that you listened to which specifically spoke about gambling?

MR. PUCCIO: Same objection, your Honor, irrelevant.

THE COURT: It is irrelevant to the issues, but it is relevant to the previous irrelevant testimony.

I will allow it.

Do you remember a specific conversation where they discussed gambling and used gambling terms?

THE WITNESS: Sir, it is very difficult for me to --

A 1232

THE COURT: We will suspend for a few moments.

(Recess taken).

(Continued on next page.)

(Short recess.)

(After recess).

THE COURT: Anything further?

MR. IANNUZZI: Just one moment, sir.

I have no further questions.

Thank you.

THE COURT: Anything further?

MR. PUCCIO: Nothing further.

We ask Mr. Couture to resume the stand.

B E R N A R D C O U T U R E, called as a witness, having been previously duly sworn, resumed the stand and testified further as follows:

THE COURT: Mr. Couture, you have already been sworn.

You -understand you are still under oath?

THE WITNESS: Yes.

THE COURT: You may be seated.

DIRECT EXAMINATION

BY MR. PUCCIO (Continuing):

Q Mr. Couture, I direct your attention again to Government's Exhibit 20, which you testified, I believe, yesterday --

MR. PUCCIO: Withdrawn.

THE COURT: Excuse me, since you are going to reframe your question, it might be if we suspend

early, you might set up a player for the tape.

You said it would take an hour.

MR. PUCCIO: Yes, we do not need the witnesses to play the tape.

THE COURT: That's right. And they may be able to listen to it then.

MR. PUCCIO: Yes, we can handle that without the witnesses.

BY MR. PUCCIO:

Q Now, Mr. Couture, can you tell us what is contained on that tape that you have in front of you, Government's Exhibit 20?

A This is Exhibit 20. This tape contains 22 telephone conversations.

Q Where were those conversations taken?

A They were taken from the Vegas project, which were Vegas 1BPT3, 5, 7, 8, 9, 11 and 12.

Q In other words, there are conversations on that tape from various Vegas projects?

A Yes.

Q And would you be able to tell us specifically which conversations appeared on that tape, and from which Vegas projects, the conversations are taken specifically?

A Yes, sir.

A 1235

The first conversation, which is your Exhibit 43, --

Q Which exhibit?

A Exhibit 43.

Q Which exhibits numbers are you referring to?

A It is corresponding to -- it is the first conversation you have got on this tape (indicating) and referring to your exhibit 43, which is the word by word conversation.

MR. IANNUZZI: Well, we have a little bit of difficulty because the exhibits introduced here, 13, 14, 15, 16 etcetera, are similar to 43, 44 etcetera, but I think we should eliminate the confusion.

Q Mr. Couture, why don't you tell us the conversations that are contained on the tape and do not refer to our numbers.

Just give us the date of the conversation and the Vegas project it is taken from.

A Yes. The first conversation is on Thursday, the 31st of December, 1970, between 1600 hours and 2000 hours.

Q Now, is there any way in which you are able to fix the exact time when the conversation took place?

A No, it's impossible, sir.

Q That is because the machines were operated on

an automatic starter?

A Yes, at that time, we had a few projects. This way, we had to take a project, another project, and another project, and it is really impossible to say the exact time this --

Q So no one was present to record the exact time the conversation was intercepted, is that right?

A Yes, sir.

Q How do you determine it was between 1600 hours and 2000 hours?

A First of all, because of the project, if you look at the inside of the conversation -- if you read the conversation, they might give an approximate hour.

For example, Mr. Dasti, starting with Mr. Oddo, he might say, it is about this time --

Q Well, --

A And another thing, we knew that Mr. Dasti was going as far as the 837, the Victoria Sporting Club -- we know that Mr. Dasti was going there after a certain time.

It's in the morning. He arrived at the Victoria Sporting Club around --

Q Well, was the tape -- was each tape put on one of the tape recorders at a certain time and taken off at a certain time and did the tape itself run for a certain period of time?

A Yes, sir.

Q Did that help you determine the hours within which the conversation took place?

A Yes. We usually take the tape at each hour take out the tape of the machine and listen to the tape at approximately at each hours.

Q Approximately? I am sorry. Ididn't hear the last part.

A At each hours. Let's say if we had a few projects at the office, we take out the tape approximately at each hour.

We listen to those tapes each hours.

Q Will you continue to tell us the conversation contained on Government's Exhibit 20?

A This first conversation of the 31st of December, 1970, happened between 1600 hours and 2000 hours.

And this conversation was intercepted from telephone number Area Code 514 677 9272.

Q Who is that phone listed to?

A It was listed to the Victoria Sporting Club, 837 Taschereau Boulevard in Longeuil, Canada.

And it's an incoming call. It's an unknown male to Mr. Frank Dasti.

Another phone call was intercepted on either December 3, or December 31, 1970.

MR. IANNUZZI: Would this be number two?

THE WITNESS: Yes, sir.

A (Continuing) That corresponds to your Exhibit 44.

This phone call happened between 1600 hours on December 30, and 1600 hours December 31, 1970. And this telephone conversation was intercepted from area 514 677 9272, and also listen to the Victoria Sporting Club, the same address.

And it was a long distance call, an incoming call, long distance, unknown male to Frank Dasti.

THE COURT: Did the caller ask for Frank Dasti?

THE WITNESS: Yes, they were asking for Frank, sir.

THE COURT: Just Frank?

THE WITNESS: Yes, sir.

But I identified positively, Mr. Frank Dasti, to be the person that talked with the unknown male.

THE COURT: It is listed to the Victoria --

THE WITNESS: Sporting Club.

THE COURT: Sporting Club.

THE WITNESS: Yes, sir.

Q Now, at the time the conversation was first listened to, the person speaking to Mr. Dasti was unidentified?

Is that correct?

A Yes, sir.

Q Now, was that person subsequently identified?

A Yes, sir. He was identified as Mr. Paul Uddo.

Q And directing your attention to the prior conversation in which an unknown male was overheard speaking to Mr. Dasti, then was that unknown male subsequently identified?

A Yes, sir, that is the same person, Mr. Paul Oddo.

Q And your original logs and notes covering this reflected both callers as unknown males, is that correct?

A Yes.

Q In the two conversations that you described?

A Yes, sir.

A third phone call was intercepted on December 3 of 1970, between 1600 hours and 2000 hours, and this is corresponding to your exhibit 45, which is number three.

And the telephone conversation was intercepted from area code 514 488 0339.

And this phone number was listed to Frank Dasti, 4635 Clan Ranald, Apartment 418 in Montreal, Canada.

It's an outgoing call, long distance call, between Frank Dasti to an unidentified male.

Q Was that male later identified as Paul Oddo?

A 1240

THE COURT: Did you recognize the voice on that telephone call made from the home of Frank Dasti? As the same voice that received the telephone call to the Victoria Sporting Club?

THE WITNESS: There is no doubt in my mind that Mr. Dasti was one of the persons involved in this call.

As far as the other one, I admit, your Honor, that I have a few problems in identifying Mr. Oddo, and Vanacoura. I couldn't say exactly.

THE COURT: All right.

A (Continuing) Another phone callwas intercepted on the first of January, 1971, between eight A.M., and 1600 hours.

This phone call corresponded to Exhibit 47, which is number four.

It was intercepted --

Q Number four in your sequence? Is that correct?

A Yes, sir. And was intercepted from area code 514 488 0339, listed to Frank Dasti, same address.

And the phone call is an outgoing call, long distance call from Frank Dasti to an unknown male that was later identified as Paul Oddo.

Another call registered on the first of January 1971, between 3 A.M. and 1600 hours, corresponding to

Government's Exhibit 46, and our number 5.

It was intercepted from area code 514 488 0339, listed to Frank Dasti, same address.

It's an outgoing call, long distance call, Mr. Frank Dasti to a certain Paul that was after identified as Mr. Paul Oddo.

Another phone call intercepted on the first of January, 1971, between 8 hour a.m. and 1600 hours intercepted from area code 514 488 0339, listed to Frank Dasti, same address.

It's an outgoing call, Mr. Frank Dasti to Frank Cotroni corresponding -- there is no exhibit produced in this case.

MR. PUCCIO: Your HOnor, there is an exhibit, or I shouldn't say an exhibit, but there is a reference in the discovery material. I do not think the witness is aware of it, but a transcript of this conversation and translation has been handed over.

THE COURT: All right.

A (Continuing) And another phone call intercepted on January --

MR. IANNUZZI: Can we just have the number of that, Mr. Puccio, just so our records are clear?

MR. PUCCIO: In the discovery material submitted on November 8, 1974, it would be item 28,

a copy of transcript of January 1, 1971, telephone conversation between Frank Dasti and Frank Cotroni.

A (Continuing) Another phone call intercepted on January 2, 1971, between 1000 hours and 1600 hours intercepted from area code 514 677 9272, listed to Victoria Sporting Club.

It's an incoming long-distance call between an unknown male and Frank Dasti -- between two unknown males and Frank Dasti -- I am sorry.

Those two unknown males were Paul Oddo and Tony Vanacoura.

Another phone call was intercepted on January 4, 1971, between 1000 hours and 2000 hours, intercepted from area code 514 677 9272, listed to Victoria Sporting Club.

It's an incoming long-distance call. It is an unknown male to Frank Dasti.

And there is an unknown male and another person called Tony to Frank Dasti.

The first unknown male was identified later as Paul Oddo, and the other one that was called Tony, was identified as Tony Vanacora.

This corresponds to exhibit 49.

(Continued on next page).

Another call was intercepted on the fifth of January, 1971, between 1000 hours and 1730 hours, intercepted from area code 514 677 9272, listed to Victoria Sporting Club.

It's an incoming call, long distance, an unknown male to Frank Dasti, and a certain Tony.

This unknown male was identified later on as Paul Oddo.

And the other one, Tony, was identified as Tony Vanacoura.

And this corresponds to Exhibit 50.

Another call on the fifth of January, 1971, this one 2100 hours and 2400 hours, intercepted from 514 677 9272, Victoria Sporting Club.

It's an incoming call, long distance, an unknown male, a certain Tony, to Frank Dasti.

The unknown male was identified later on as Paul Oddo, and Tony is Tony Vanacoura, corresponding to Exhibit 51.

Another one on the eighth of January, 1971, between 2000 hours and 2400 hours, intercepted from 514 488 0339, listed to Frank Dasti.

It's an incoming call, Frank Dasti to Margeurite Dasti.

This corresponds to Exhibit 53.

Another call on the eighth of January, 1971, between 2000 hours and 2400 hours, intercepted from 514 488 0339, listed to Frank Dasti.

A 1244

Its an incoming call, Mr. Rene Di Fruscia to Frank Dasti.

And this corresponds to Exhibit 52.

Another phone call on the 12th of January, 1971, between eight A.M., to 2000 hours, intercepted from 514 256 7978, listed to P. Malo, 6649 Chauvin Street, in Montreal Canada.

It's an incoming call, long distance, Frank Dasti to Frank Cotroni.

Another phone call on the 13th of January, 1971, between 1000 hours and 2000 hours intercepted from 514 677 9272, which is the Victoria Sporting Club.

It's an outgoing call, Mr. Frank Dasti to Margeurite Dasti.

That corresponds to Exhibit 54.

Another one on the 13th of January, 1971, between 1000 hours and 2000 hours, intercepted from 514 677 9272, listed to Victoria Sporting Club.

It's an outgoing long distance call, Frank Dasti to a certain Mr. Murray.

That corresponds to Exhibit 55.

Another one on the fifteenth of January, 1971, between 1000 hours and 2000 hours intercepted from 514 677 0378, listed to Victoria Sporting Club pay station. Same address.

A 1245

And it's an incoming call, Frank Cotroni to Frank Dasti.

Another one listed on the fifteenth of January, 1971--

MR. IANNUZZI: May I just ask a question.

In reference to number 16, that you just spoke about, was that an incoming or outgoing, was it a long distance call?

THE WITNESS: It's an incoming call, sir.

A (Continuing) The other one is on the fifteenth of January, 1971, between 1000 hours and 1930 hours, intercepted from 514 677 9272, listed to the Victoria Sporting Club.

And it's an incoming long distance call, unknown male to Frank Dasti.

This unknown male was later identified as Paul Oddo.

And this corresponds to Exhibit 56.

(Continued on next page.)

DIRECT EXAMINATION

BY MR. PUCCIO: (Cont'd.)

THE WITNESS: Another one on the 16th of January, 1971 at precisely 1000 hours a.m. Intercepted from 514 861 0615, it's a pay phone, listed to Laurentian Hotel, 113 on Peel Street, Montreal, Canada.

Incoming call long distance, unknown male to Frank Dasti, this unknown male was later identified as Paul Oddo and it's corresponding to Exhibit 57.

Another call was intercepted on January the 16th, 1971 between 1000 hours, intercepted from 514 677 9272, listed to Victoria Sporting Club, same address, and it's an incoming long distance call, unknown male to Frank Dasti. The unknown male was later identified as Paul Oddo.

This corresponds to Exhibit 58.

Another phone call on the 17th of January, 1971, between 1000 hours, intercepted from 514 677 0378, listed to Victoria Sporting Club. It's an outgoing long distance call, Frank Dasti to Frank Cotroni.

Another one on the 19th of January, 1971, between 1000 hours and 1600 hours, intercepted from

514 677 9272, listed to Victoria Sporting Club. It's an incoming call, long distance, unknown male to Frank Dasti. Unknown male identified later as Paul Oddo. It corresponds to Exhibit 59.

The last one was intercepted on the 20th of January 1971, between 1000 hours and 2000 hours. Intercepted from 514 677 0373. It's listed to the Victoria Sporting Club. It's a pay phone. It's an outgoing call, Frank Dasti to Frank Cotroni in Acapulco.

BY MR. PUCCIO:

Q Now, the Government's Exhibit 20, which contains recordings of the conversations you just described was made from the master tapes, is that correct?

A Yes, sir.

Q And the master tapes are still in the possession of the Quebec Police Force?

A Yes, sir.

MR. PUCCIO: I have no further questions, your Honor. I offer Government's Exhibit 20 and Exhibits 13, 14, 15, 16, 17, 18, 19, 11 and 12 into evidence for the hearing.

THE COURT: Any objection other than that already stated?

MR. IANNUZZI: None in reference to 13 to 19. I would like to have a couple of questions on voir dire with reference to 20, if I may, sir.

THE COURT: 13 to 19?

MR. IANNUZZI: Yes, sir.

THE COURT: Go ahead.

VOIR DIRE EXAMINATION

BY MR. IANNUZZI:

Q Now, Mr. Couture, --

MR. PUCCIO: I'm sorry, I missed that.

THE COURT: This is a voir dire and/or cross-examination.

Q Mr. Couture, the tape number 20, did you reproduce that from the master?

A The one which was involving Mr. Frank Dasti to Mr. Cotroni?

Q No, No. 20 here, the exhibit, the reel of tape.

A No, I didn't.

Q Was it done at your direction?

A It was done under Mr. Patenaude's direction.

Q Were you present when it was made?

A I was not, sir.

Q Do you know who made it?

A Yes, sir.

Q Who was that?

A Sgt. Aube from the Quebec Police Force.

Q Have you compared this to the original?

A Yes, sir.

MR. IANNUZZI: I have no objection.

THE COURT: Do you find it identical to the original?

THE WITNESS: Absolutely, sir.

MR. ROSENTHAL: No objection.

THE COURT: It may be marked over the objections already stated. It's only for the purpose of the hearing, of course.

THE CLERK: Government's 13 through 20 previously marked for identification now marked into evidence for the purpose of the hearing.

(So marked)

MR. PUCCIO: I'd also ask that 11 and 12 be received.

THE CLERK: And 11 and 12 as well.

(So marked)

THE COURT: Have you completed your direct examination?

MR. PUCCIO: Yes.

THE COURT: Cross-examination.

CROSS-EXAMINATION

BY MR. IANNUZZI:

Q At the time these tapes were undertaken by yourself, sir. were you in fact a policeman?

A Yes, sir.

Q You were not just an expert in tape recording, working for the police department?

A No, sir, I was a police officer.

Q And were you a member of a squad, if that would be the correct term -- withdrawn. Did you work in conjunction with Mr. Lavallee in this case?

A Yes, sir, although I have to say that Mr. Lavallee was working upon the electronic part as technician, and I was doing it as -- I was analyzing all information.

Q Well, he had one function and you had another, but basically you were working on the projects together, is that right?

A Yes, sir.

Q And prior to this project or these projects, had you worked with Mr. Lavallee before?

A Yes, sir.

Q For how long?

A Since 1965.

Q And were you working with Mr. Lavallee during the tenure of Director General Robert?

A Yes, sir, I did.

Q Did there come a time when you were advised by your, I believe, lieutenant, to discontinue wiretapping procedures?

A I was not advised by my lieutenant at that time. I heard about it, but I was not advised about it.

Q Well, how did you hear it?

A I think Mr. Lavallee told me that Mr. Robert was -- didn't like wiretapping.

Q The Director General didn't like wiretapping?

A Didn't like or was --

Q Against it, but --

A Not against it, but --

Q Didn't approve of it?

A Not approve it, but he liked us to be very -- to be very careful in doing that type of work.

Q Did Lavallee indicate to you that the Director General had indicated that the wiretapping should be discontinued?

A Not discontinued, sir.

Q Did you, with Lavallee and the rest of the members of your group, decide to continue wiretapping, in

any event?

A I was not the one who decided to continue the wiretap.

Q Who was the one?

A The one who was in charge at that time was Mr. Patenaude. I didn't know all his intentions.

Q Was Mr. Patenaude in charge at the time that Director General Robert was in charge of the -- was the Director General?

A He was the first officer. He was the first officer in charge of our squad.

Q Did you ask him whether or not you should do anything or discontinue anything after you heard about Director General Robert's direction?

A No, sir. I was there only to analyze the information, I wasn't there to wiretap the lines. Lavallee or somebody else decided to get a line, and I had to analyze the information that came through the line.

Q So, in other words, the direction from Director General Robert was just not to tap the wires, but he didn't say anything about listening?

A I couldn't say, sir.

Q And it was your opinion at that time that even though wiretapping should be discontinued, the listening

was all right?

A Could you repeat your question, please.

Q Was it your opinion at that time that although Director General Robert gave directions, say, to Lavallee and whoever else was tapping wires, that they should not tap wires, that that didn't apply to the listeners?

A Yes, I think. As far as wiretaps, I was analyzing the information. If there was, let's say, a wiretap done, I would analyze. If not, well, I'll wait. I'd wait.

Q But, in any event, you do recall that Lavallee said that the Director General wanted the wiretapping stopped?

A I think it's Lavallee that told it to me. He didn't tell me that I'd have to stop the wiretap, but he told me that Mr. Robert was -- he wanted us to be very careful in doing wiretaps.

Q In connection with the interceptions in this case, was there a warrant issued by a Court to permit these interceptions?

A No, sir.

Q Was there a Judge who was in charge of supervising your activities to determine that you didn't listen to conversations that you shouldn't?

A No, sir.

Q Was there a Crown attorney or a representative, a lawyer representing the government, supervising your activities, to whom you reported and told what you were taping or not taping?

A Not that I know of.

Q After the tapes were made, were they sealed and filed away, pursuant to the -- within the knowledge of a Judge or a Crown attorney or anything like that?

A No, sir.

Q Were they sealed at any time, as a matter of fact?

A They weren't sealed, sir.

Q When they were stored, where were they stored?

A In the security file and then into a vault, which, the security file, I was the one that had the key with Corporal Lavallee, and the vault was -- Mr. Patenaude got the combination with Corporal Lavallee.

Q Was that vault closed or opened all day, was it locked all the time?

A The vault would be open between 8:30 to 4:30, but inside the vault there is security files which Mr. Patenaude only held the keys, and as far as Vegas project, they were inside the security file. And to have access to

it I had to go see Mr. Patenaude and ask him to see it.

Q Would anyone else see those on a "need to know" basis?

A Well, he had to go and see Mr. Patenaude if you wanted to see it?

Q Now, concerning the actual conversations, did you -- you indicated that you listened to all of the original tapes, is that correct?

A Yes, sir.

Q And you also indicate that none of those original tapes are now available?

A No, sir.

Q You listened to these tapes which were produced on automatic machines, correct?

A Yes, sir.

Q Were all of them except for 1-B, P.T. and 3, but that portion of 3 which was in the Laurentian Hotel --

A Yes, sir.

Q -- were all of the others on automatic machines at police headquarters?

A Yes, sir.

Q And 1-B and P.T. were in the cellar of a building near the Victoria Sporting Club, correct?

A In an apartment.

Q Didn't you indicate that you rented a basement -- yesterday, you testified you rented a basement and you went there two or three times a day and had Robert's recorder with an automatic starter?

A Yes, sir, but I didn't say a basement. An apartment.

MR. IANNUZZI: May I have a moment, Judge?

(Pause)

Q In any event, these apartments -- you say apartments, is that right?

A Yes, sir.

Q In reference to these apartments that you testified to, who had access to those apartments?

A Myself and Corporal Lavallee.

Q These were in buildings outside of the police headquarters?

A Yes, sir.

(Continued on next page.)

CROSS-EXAMINATION

BY MR. IANNUZZI (Cont'd):

Q And -- by the way, did you ever go and do anything connected with the taps, the actual taps at the junction boxes, at the terminal boxes?

A I went with Mr. La Vallee, but only as observer.

Q And after LaVallee installed these taps, did you ever go back to those places?

A Which places?

Q Any of the junction boxes.

A Not in those ones, sir. Except Victoria Sporting Club.

Q In other words, did you ever go back with LaVallee, or did you ever go back by yourself, to the place -- you know what the little old lady is?

A Yes, sir.

Q Did you ever go back to the place where the little old lady was installed?

A Never, sir.

Q Did you ever change the little old lady?

A Never.

Q Do you know after LaVallee was there if anyone ever changed it?

A Not that I know of, sir.

Q Do you know if anyone changed the wires?

A Not that I know of, sir.

Q In reference to the apartments, how were they secured, do you know?

A Yes, sir. We had two of our own locks installed on the door.

Q When you say they were your own locks, what kind of locks were they?

I mean were they unusual locks or they just were locks put on there by police as opposed to locks that had already been installed?

A Ordinary locks.

Q Just an ordinary lock?

A Yes, sir.

Q Do you know of your own knowledge whether anyone ever went into that apartment while you were not there?

A Not that I know of, sir.

Q There wasn't a guard at the door at any time, was there?

A No, sir.

Q And how often would you pick up the tapes on 1-B and P.TO.?

A Most of the time we did two or three a day, depending upon the information we could get.

Let's say if one day we thought that something was -- some information -- something could come out in a few days, as far as a drug transaction or other kind of information, we could go three or five times a day, depending --

Q For instance, there were times that you didn't go for 10 hours?

A Pardon me, sir?

Q Sometimes you didn't go for 10 hours.

A What do you mean?

Q You didn't go to pick up the tapes for 10 hours?

When you say sometimes "we'd go every couple of house," sometimes you wouldn't go for 10 hours?

A During that time, sir, only during nighttime, sir, becasue daytime we could go there approximately each five or six hours.

Q Let me ask you, in reference to Call No. 14 and Call No. 15, for instance, which was in reference to the Victoria Sporting Club --

A Yes, sir.

Q -- 677-9272, 677-9272, both calls.

A Yes, sir.

14, you say?

Q 14 and 15.

A Yes, sir.

Q Those calls came in somewhere between 1018-2000 hours; correct?

A Yes.

Q And 1000 hours of course is 10:00 o'clock in the morning?

A Yes, sir.

Q And 2000 hours is 8:00 o'clock at night?

A Yes, sir.

Q Is that correct?

A Yes, sir.

Q And you can't tell what time that call came in because nobody picked up that tape during that period of time?

A No, sir. I've got to explain over here, Mr. Dasti -- 99 per cent, Mr. Dasti went to the Victoria Sporting Club between 1000 and 2000 hours. If we do eight pickup -- let's say if we do three pickups in the day, as far as the locations are concerned, I didn't write down this is pickup No. 1, this is pickup No. 2 and this is pickup No. 3. I didn't write down the hours.

So it's impossible for me today to tell you: Well, this happened on the second pickup at such a time.

Q So therefore, although you picked up the tapes, according to your testimony, perhaps several times a day,

you wouldn't bother to indicate that this was picked up on the tape -- or this was intercepted on the tape that I had picked up by 11:00 o'clock this morning or by 12:00 o'clock?

A Yes, sir.

Q You just let the time span from 10:00 o'clock in the morning to 8:00 o'clock at night stand although you had it more precisely, a more precise time for it?

A Yes, sir. You see, our logs usually went from zero zero hours to 2400 hours, and that's why we didn't put down the time, the exact time. It was better for us not to put any hours instead of putting an hour that wouldn't be precess or accurate.

Q At the time that these tapes were being taken no one was personally listening to the conversations?

A No, sir.

Q At any time?

A Some time it happened, let's say if I go at what we call our O.P. and I happen to change -- let's say I arrive there and there is already somebody talking on the phone, I'm listening to that conversation and I wait that it ends, then I change the tape.

Q Well, did you have to listen to that with earphones or was it just playing right over the loudspeaker?

A There was kind of a volume thing that I put on a little bit, and if the machine turned on -- because there was something going on.

Q But ordinarily, and not only in P.T. and 1-B but in all of the tapes, these were taken without actually being manned, that were manned by people listening?

A Yes, sir.

Q If you listened it was just an accident?

A Yes, sir.

Q So basically, it would be fair to say that the tapes were not, or the conversations were not listened to by human ear until after you took the tapes off?

A Yes, sir.

Q Correct?

A Yes, sir.

Q And the machines that you used to record this, were you in charge of maintaining those machines?

A , I was in charge of keeping them in good order. Say, if there was something wrong with the machine, which happened very frequently -- which happened very rarely, I was the one that took out the machine, give it to somebody else and change it for a good machine.

Q Did you have a regular service procedure that you would use on the machnies or just when they started not

to work properly you would have them repaired?

A It depends as far as cleaning it, what we call the head --

Q The tape head --

A The tape head, we were doing it each week -- I was doing it each week.

Q The machine itself, for instance, checking that it was properly revolving, the revolutions, the timing, was this done on a regular basis or only when a machine stopped working?

A No, it was done once a month, approximately.

Q And was that done by yourself?

A I took out the machine and changed only, I didn't touch the -- I didn't repair the machine. If they were in troubles I didn't repair it.

Q So it's your testimony that you would take each machines off at least once a month and change it?

A Approximately.

Q How many -- withdrawn.

In connection with this project, how many telephone wires, for instance, were being used in headquarters to record the -- all of the Vegas projects?

A Depending on which date.

Q Well, let's say December, 1970, and January, 1971.

A And only on the Vegas project?

Q Yes, just on the Vegas projects.

A You had Vegas 2, 4 -- Vegas 2 and 4.

Q Were the only ones using a telephone line to headquarters?

A Yes, sir.

THE WITNESS: I'm sorry, your Honor, Vegas 2 was outside the office.

Q No, no. Inside the office --

A Inside the office was only Vegas 4. Plus those ones, plus Vegas 3, 5, 7, 8, 9, 11 and 12.

Q They were all inside the office?

A Yes, sir.

Q That's what I asked you. How many?

A There was eight, sir.

Q Eight?

A Yes, sir.

Q And these were being used over a telephone line fol in headquarters?

A Yes, sir.

Q And this telephone line was a dedicated line, that is to say, it was open all the time?

A Yes, sir.

Q And were these all telephone numbers that had

been rented by the police?

A Yes, sir.

Q Were they all the same exchange as the headquarters phone?

A No, sir. They were in the same exchange, yes.

Q Yes?

A Yes.

Q That's what I meant. I didn't mean they were te same number. They were all different numbers?

A Right.

Q When a conversation - withdrawn.

After the conversation was recorded, you would for the first time take the tape off; is that correct?

A Yes, sir.

THE COURT: We will take a short recess. I have to hear another matter.

(Recess taken.)

(Continued on next page.)

LH

1 THE COURT: Mr. Couture, would you take the
2 stand again.
3 B E R N A R D C O U T U R E, resumes witness stand and
4 testifies further as follows:
5 MR. IANNUZZI: May I proceed?
6 THE COURT: Yes.
7 MR. IANNUZZI: Thank you.
8 CROSS-EXAMINATION
9 BY MR. IANNUZZI:
10 Q Mr. Couture, were you called, sir, as a witness
11 in a case in Canada in connection with these tapes?
12 A Yes, sir.
13 Q Were you asked certain questions in reference
14 to your participation in the taping?
15 A Yes, sir.
16 Q Did you take what we know as the Fifth Amendment,
17 refuse to answer questions?
18 A On the recommendation of my lawyer.
19 Q You asked the recommendation of your lawyer
20 not to testify on the grounds that your testimony may
21 incriminate you of a crime?
22 A Yes, sir.
23 Q What was the crime?
24 A There was no crime as far as I am concerned.
25 Q Was the crime --

A I was only a witness in the conspiracy case.

Q When you refused to answer questions on the basis -- withdrawn. You indicated that you asked for --

A Protection.

THE COURT: Do you want me to infer that he committed a crime because he asserted his rights?

MR. IANNUZZI: No, your Honor.

THE COURT: What is the purpose of this then?

MR. IANNUZZI: To make a determination, if there was no crime at all, then there are no rights.

THE COURT: This witness is not an expert. I have listened to a number of them.

MR. IANNUZZI: I know.

THE COURT: Why are you asking him then?

MR. IANNUZZI: To establish the facts --

THE COURT: He said he did it on the recommendation of his lawyer. That's the fact.

MR. IANNUZZI: Very well.

Q Were there occasions on those conversations where the reception between the parties was not the best reception?

In other words, were there times when the parties would indicate on the record that they had difficulties?

A Never.

Q Never.

Would you go to the conversation of 12/31/70 -- I will get the Vegas Project for you in a moment.

It would be with reference to 488 0389, original call 45, that would be Number 3 tape?

A Yes.

Q Do you have the transcript there, sir?

A Yes.

Q Would you look at Line 93?

A Yes.

Q Let me get the proper one. There may be more than one phone call on that day.

(Pause.)

I am sorry, I have the wrong call. It is the same day, 677 9892, which would have been 44, that would be Number 2 I believe -- Tape Number 2?

A Right.

Q Is that correct?

A Yes, sir.

Q At Line 93 of the transcript or even at Line 91 and 92, does it indicate not in the conversation but in your notation that there was a bad connection?

A As far as this one is concerned, sir, I could tell you that there's a click on the conversation.

4 Couture-cross

I did that type of work from 1965 to 1960 --

Q May I ask you to answer the question with reference to it:

Is there indication in your summary by yourself that there was a bad connection?

A Yes.

Q Is there on Line 94 apparently some difficulty because in the middle of the conversation the people start saying "Hello, hello"?

A Yes, sir.

Q Was that in fact what you wrote down at that time, that there was a bad connection there?

A Yes, sir.

Q Are there not in fact other phone calls where that similar thing happened?

A Not that I recall, sir.

MR. IANNUZZI: Without wasting time, I will do that over the lunch hour.

May I come back to that, Judge?

THE COURT: Yes.

Are you going to listen to the tape while I am listening to it?

MR. IANNUZZI: Yes.

THE COURT: What's the sense in asking him then?

I will hear the tape and you will hear it. Why don't you argue at the time the distorted conversation comes through, that that conversation shouldn't be admitted?

MR. IANNUZZI: It isn't a question of distortion, it is a question that in addition to these tapes, the 21 or 22 tapes, there were many many other conversations and the question of -- if we accept the interpretation of one of the Canadian Courts, that there must be interference in order to violate one of the sections of Canadian law -- I would like to establish the fact that there was interference as a result of the mechanisms put on the wires by the police.

THE COURT: Go ahead.

MR. IANNUZZI: Thank you.

THE COURT: He didn't say the interference was because of the mechanisms.

MR. IANNUZZI: I understand that, sir.

THE COURT: You get a bad phone call once in a while and the wire wasn't tapped.

MR.IANNUZZI: I do not know. I hope it wasn't.

THE COURT: You never thought that it was the reason.

MR. IANNUZZI: Yes, I do all the time as a matter of fact.

THE COURT: Strange, I do not feel that way.

BY MR. IANNUZZI:

Q At any event, Mr. Couture, when these tapes were taken off the machine, they were not listened to on the same machine that they were recorded on; is that correct?

A No, sir.

Q They were listened to on a different machine, because the machine on which they were recorded were still recording?

A Yes, sir.

Q Did you have other machines of the same type or different types?

A We used a Royal Deluxe to record and to play back, the type we used was the RCA recorder.

Q RCA?

A Yes.

Q Were you also in charge of keeping those machines in proper order, at least to the extent of overseeing their condition?

A On this project I was in charge of keeping the machines in proper order, not to repair them.

Q I understand that. You wouldn't do the actual

repairing yourself?

A No, sir.

Q And by the way, during the projects were any members of the American -- any agents or representatives of the AMerican Government at Police Headquarters during the recordings?

A During the recording, never.

Q After the recordings were made and the tapes were taken off, were any members of the American Government -- I mean any person who was not a Canadian Police Official, and I mean an official. I do not mean a person that happened to come for a visit, I am talking about an official, whether he was there on official business or not, during the time that tapes were played back?

A I wouldn't say on official business, but I could say that we called Staff Sergeant Sauve --

Q He was with the RCMP?

A -- Mr. Gallagher or Mr. Swanson came with Mr. Sauve.

Q When you would call Mr. Sauve, he would come with Swanson or Gallagher, either one or the other, or sometimes both perhaps?

A Sometimes.

Q Would they listen to the tapes?

A Sometimes.

Q When was the first time that you could recall that they listened to the Vegas Projects?

A Must be around December or January of 1971.

Q Was not the Vegas Project in effect for a substantial period before December of 1970?

A No, sir.

Q Didn't the Vegas Project go into effect in July of 1970?

A Yes, sir.

Q And during that period of time, do you know whether or not Agent Gallagher or Agent Swanson or any other agent of the United States Government heard the cases in the Vegas Project?

A They came with Mr. Sauve.

Q In listening to these tapes, do you know whether or not Agent Gallagher or Agent Swanson made suggestions either to yourself or to Agent Sauve concerning the content?

A Concerning the content?

Q Yes.

A The only thing that they could say to us, as far as the identification of Mr. Oddo or --

Q Did they suggest any further projects perhaps?

A Never.

Q Did you make up transcripts for them?

A Never.

Q They never got a copy of the transcript?

A Never.

Q They never got a copy of the logs?

A Never, sir.

Q Did they ever look at the logs?

A Yes.

Q Did they ever look at the transcripts?

A Yes.

Q Did they ever take notes concerning the same?

A Yes, sir.

Q Did they ever take copies of the tapes?

A Never.

Q Did you ever permit them to record part of the copy tapes on a machine of their own?

A No, sir.

Q I assume that you cannot be responsible for what Gallagher or Swanson said to Sauve out of your presence, you don't know if they said anything to Sauve while you were not there?

A No, sir.

Q Did Mr. Sauve discuss these matters with

MR. Patenaude?

A Yes, sir.

Q Did he make any suggestions concerning the scope of the Vegas Projects?

A Not that I know of, sir.

Q Did he ever suggest "Well, perhaps we could -- we should go after Petroni's wire or Dasti's wire or somebody else's wire"?

A No, sir.

Q When you say "No" it's in reference only to yourself, of course?

A Yes, sir.

Q Other than yourself, you say that Aube listened to these tapes?

A Yes.

Q At any of them, did Aube ever work without you?

A At that particular time Aube was always with me.

Q In other words, he might listen and you would be typing or you might be listening and he would be typing, but you are the one that dictated all the transcripts?

A Yes, sir.

Q Did you testify yesterday with reference to

certain aspects of the tapes, that there were certain calls for financial reasons merely recorded the outgoing call and not the ingoing call?

A We cannot record the outgoing call -- I mean the dial -- I mean for example, If Mr. Dasti is going to call the operator, he is dialing zero. This was not recorded.

Q Is that what you were testifying to yesterday when you said you did not record the outgoing calls, that you did not record the dialing numbers?

A Yes, sir.

Q Of course, the machines that you used were automatic, activated by sound?

A Yes, sir.

Q And of course the dialing sound would activate the machine?

A Yes, sir.

Q So the outgoing call was in fact recorded?

A Yes.

Q When you said you didn't record it, that isn't exactly correct as far as the tape is concerned?

A You are right.

Q Are you indicating the you didn't bother to put it down on paper?

A On a master tape. On the logs we wrote down the number that was called.

Q You wrote down on the logs the number that was called or the number for which the call was made?

A That was called. Mr. Dasti calling Mr. Cotroni, we could have put -- let's say -- the phone number which Mr. Dasti was dialing -- dialed.

Q Did you put that down?

A Some of the calls, sir.

Q In connection with call Number 6, Tape Number 6 --

A Yes, sir.

Q -- that was a call from the phone listed to Frank Dasti, according to your testimony; is that correct?

A Yes, sir.

Q And you say that you also recorded on most of these the number to which the call was made?

Would you tell me to which number that call was made?

A It was made to Mr. Frank Cotroni. I couldn't say right now if it was made to his residence or somewhere else.

Q In other words, it isn't down?

A Not in this particular conversation, but on our --

Q I understand.

In reference to that particular conversation, have you noted down the number to which the call was made?

A Could I use my other --

Q Certainly, anything that you have available.

MR. IANNUZZI: I am sorry, I gave the witness a direction. I hope --

THE COURT: It is all right.

MR. IANNUZZI: Thank you, sir.

(Continued on next page)

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A Yes, sir. I could tell you that it was a call at Mr. Frank Cotroni's residence.

Q It indicates that on something that you have?

A Yes, sir.

Q Is what you have different than what you have supplied to counsel?

May I know the page you have?

A It is project Vegas 3, page 80.

MR. PUCCIO: That would be in the discovery materials of December 5, 1974.

Q Project Vegas 3?

A Vegas 3, page 80.

Q That page, is that 80A?

A No, sir, just the one before 80A.

Q That would be a log, in other words?

A Yes, sir.

Q On the log you indicate that it says here --

A Mr. Dasti to Mr. Frank Cotroni at his residence.

Q And when you indicate that, there is no indication of any number here, it is just that you have marked down that it was his residence?

A Yes, residence, sir.

Q How is it that you ascertained that it was his residence?

A Because at that time, I could have decoded the

number or I could have -- it could be that Mrs. Cotroni or one of his children answered the phone.

Q This is all an assumption on your part in reference to how you did this?

A What I doknow, sir, based on my experience.

Q Was it that you decoded the number or that Mrs. Cotroni was on the wire?

A Right now, it's impossible to tell you. It's because, let's say, I recognized the voice of Mrs. Cotroni, or I did decode the phone number.

Q The phone call is the next phone call, and is there any female voice on that phone call, which is phone call number 6 of January 1, 1971, between eight o'clock in the morning and four o'clock in the afternoon, starting at page 80A and going through --

A Yes, sir.

Q --page 80F?

A Yes, sir. You see, there is a UM.

Q Unknown male? Is that Mrs. Cotroni?

A It could be eitherof his children, or someone else.

Q It could be.

A Could be.

Q The question is, what is it?

A 1261

A It could be one of his children.

Q It could be the janitor. What is it?

A It's a UM, unknown male.

Q Unknown?

A Yes, sir.

Q We don't have the tape, we don't have the original tape, to know whether you have the code on there.

A We have the master, the mastertape.

Q Does the master have the code?

A No, there is not --

On this one, it is an incoming call, sir.

I am sorry, it's an outgoing call, and it's not -- the number was not decoded.

Q The number was not decoded?

A It's not registered on the master tape.

Q It is not?

A No, sir.

Q And so you don't know from a code, specific electronic impulse, what the number is?

A No, sir. If I put residence -- if I put residence, and I mark UM over it, that means I decode the phone number.

Q You did?

A No doubt, sir.

A 1282

Q We don't have that tape?

A No, sir.

Q Andthe tape does not exist? Anywhere in the world?

A We have got the tape, we have got the conversation--

Q Do you have the code?

A But we havent got the dial.

Q You don't have that?

A No, sir.

Q So when you put this down, there is no way of our checking except for you to testify that that's what that tape indicated?

A Yes, sir.

Q Now, in refernce to tape number 13, which you have in front of you --

A Yes, sir.

Q Can you indicate what number was called on that particular conversation?

A That's an incoming call, sir. There was no number called at that time.

THE COURT: We will suspend this matter until two o'clock.

(Whereupon a luncheon recess was taken.)

* * * * * * * * * * *

A 1253

AFTERNOON SESSION

@:00 O'clock P.M.

B E R N A R D C O U T U R E , having been previously duly sworn, resumed the stand and testified further as follows:

CONTINUED CROSS EXAMINATION

BY MR. IANNUZZI:

MR. IANNUZZI: May I proceed, sir?

THE COURT: Yes.

BY MR. IANNUZZI:

Q Now, I believe that when we recessedbefore, I had been asking you in reference to call number 13.

A Yes, sir.

Q Now, call number 13 is in what project?

A It is in project Vegas 5.

This is page 77A to page 77H.

Q What page did you say, sir?

A It is page 77A to page 77H.

Q Very well.

Now, in that call, can you indicate there, the number to which the phone call was placed?

A It's an incoming call. It's not an outgoing call.

Q Do you know the number from which --

A It is impossible, to know, sir.

Q Very well.

A 1284

Call number 20, what project would that be, sir?

A 20 would be Vegas PT, page 252A to page 252J, like Jane.

Q Is that an outgoing or incoming call?

A It's an outgoing call, sir.

Q Do you know between whom -- who the parties are?

A Yes, Mr. Dasti calling Mr. Cotroni.

Q What was the number to which the call was made?

A Mr. Dasti was talking to an operator. It's a long distance call.

Q Did he tell the operator what number he wanted?

A He did tell him, sir, but it is --

Q Is it here?

A Pardon me, sir?

Q On the transcript?

A On the transcript? Yes, sir. If you look at page 252, I could tell you that it is an outgoing call.

Q Yes, but the point is, what is the number that he told the operator that he wanted?

A Yes, sir. I have got it right in the log there, page 252.

He called Acalpulco, number 21166.

Q Where is that? In the log?

A In the log.

Q In other words, it is not part of the transcript

A 1265

that you have given, though?

A If we are talking about the 22 conversation?

Q Yes.

A The thing which registered or which were transmitted on the master tape --

Q Yes?

A You haven't got the outgoing, when he dialed 9?

Q In this case, you say he dialed zero?

A Yes.

Q Then he told the operator what number he wanted?

A Yes.

Q That part of the conversation is not on the transcript?

A It is not on the transcript.

Q That is correct.

Is it on the tape that we have?

A No, sir.

Q So the portion of the tape in reference to call number 22, had been deleted by you?

A Yes, sir.

Q It is not complete?

A No, sir.

Q Is that correct?

A 1286

A Yes, sir.

Q Who decided to delete that portion?

A Myself, sir.

Q Did anyone tell you to take portions of tapes and not complete tapes?

A No, sir.

Q Did anybody tell you which portions of the tapes were more important than other portions?

A No, sir.

Q You did that by yourself?

A Yes, sir.

Q There is no question that that particular tape is not complete, not in the tape version and not in the transcript version? Is that right?

A Yes, sir.

THE COURT: Wait a minute. You said the conversation isn't complete?

MR. IANNUZZI: Yes, sir.

THE COURT: The conversation with the other party. He gave the number to the telephone operator?

MR. IANNUZZI: That's the testimony. That's what he says. All I know is that he says the tape is not complete.

Maybe there were other things on the tape

A 1297

that aren't here.

THE COURT: You said the tape is not complete. That's one thing. But you asked him whether the conversation was complete.

MR. IANNUZZI: In other words, reported conversations, human beings talking to each other, portions of that are not here.

In other words, this witness testified that he selected --

THE COURT: I know. I know.

MR. IANNUZZI: What was to be put on the tape and what was to be put on the transcript.

THE COURT: It is a minor problem. The Bell Telephone Company should have that long distance call. Right?

MR. IANNUZZI: I would like not the long distance number. I would like to have the other portion of the tape, Judge.

THE COURT: I know you would. Do you know why you would? You know why you would.

MR. IANNUZZI: Yes, I would like to have everything complete.

THE COURT: Because it was destroyed. Thats why.

MR. IANNUZZI: No, I would like to have it, period, because there are various parts of this conversation that are not here, and I do not know --

THE COURT: Mr. Iannuzzi, you are very unpersuasive. You do not convince me at all.

MR. IANNUZZI: I am not trying to convince you, Judge. I am just trying to get the facts before you.

THE COURT: The fact is, they do not have the tape that was destroyed. This witness and so many witnesses have said it so many times, but you keep asking the witnesses to produce the tapes that were destroyed.

This evidence will not be suppressed because the telephone number that Cotroni called is not producible on the tape.

MR. IANNUZZI: It is not a question of the phone number, Judge, and I keep saying that.

It's a question of the fact that the tapes do not have their integrity preserved. They have been spliced and edited. That's the point.

THE COURT: I have heard the testimony. All these important conversations, like how is the weather and did you take your dog out for a walk,

are not on the tapes.

MR. IANNUZZI: We do not know that, Judge. I think, to assume that, is not correct.

THE COURT: I am not assuming it. But for my purposes, I am telling you that that will not suppress what is available.

MR. IANNUZZI: We don't know what was deleted. That's the point, Judge.

THE COURT: The witness is here for cross examination. You can ask him.

(Continued on next page.)

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Q In reference to call number -- I believe I was asking you in reference to call number 20?

A Yes, sir.

Q Now, with reference to No. 22?

A Yes, sir.

Q What project is that, sir?

A This is project Vegas 1B, reference page 303A to 303F.

THE COURT: Did you tell me that the full conversations were put on the tape, except for the telephone numbers?

THE WITNESS: Yes, sir. Except, for example, Mr. Dasti dialed zero and he is asking the operator to give him Acapulco, such and such a number.

This wouldn't be on the tape. But you should get every single word of the conversation of Mr. Cotroni and Mr. Dasti.

THE COURT: The entire conversation?

THE WITNESS: Yes, sir.

THE COURT: That's what I thought.

Q Is number 22 an outgoing or incoming call, sir?

A Number 22 is in reference to Vegas PT, page 256A to 256J for James. It's an outgoing call, Frank Dasti to Frank Cotroni.

Q And does it appear thereon to where the call was directed?

A On my log, which I did on this particular date, I can tell you this was an outgoing call made to Acapulco.

Q But there are portions of the tape that have not been preserved even with reference to this call 22?

A Yes, sir.

Q Again, you decided what was important and what was not?

A Yes, sir.

Q Now, in reference to the various conversations between say, Cotroni and Dasti, are there other than the conversations that you indicated, to wit, call number 6, call number 13, call number 16, call number 20 and call number 22, five calls between Dasti and Cotroni, were there other conversations between Dasti and Catroni?

A Dasti and Cotroni spoke to each other five times concerning those 22 conversations.

(Continued on next page.)

CROSS-EXAMINATION

BY MR. IANNUZZI: (Cont.

Q No, no, other than the 22 conversations, were there other conversations between Dasti and Cotroni?

A No, sir.

Q None at all inthe entire two months?

A Yes, sir, but they weren't -- the tapes weren't kept.

Q Dasti and Cotroni did speak to each other times other than these 22 conversations?

A Yes, sir.

Q When they spoke to each other, did you keep a tape of that?

A No, sir, depending upon --

Q The question is simply this: Did you keep the tape -- the original tape?

A No, sir.

Q Did you make a copy tape?

A No, sir.

Q There is no tape at all?

A No, sir.

Q Did you decide that those were unimportant conversations?

A Yes, sir, with Cpl. Aube.

Q The two of you decided that?

A Yes, sir.

Q Did you have the direction of Mr. Patinaude in deciding what calls were important and what were not important?

A Sometimes, sir.

Q Now --

THE COURT: Can you recall the subject matters of those conversations that you discarded? Can you tell us what was said?

THE WITNESS: Between Mr. Cotroni and Mr. Dasti, sometimes they were talking about -- Mr. Dasti was talking about a certain guy that he had to reach, they were talking about money, which was supposed to be given to a certain person, they were talking about meetings, where they would meet, they were talking of a certain fellow -- I don't remember if he used his name with Orsini -- there was talking that they were supposed to give $40,000 to this guy Orsini and this money would be sent back -- with Orsini would go back to give the money back to Frankie -- there were a lot of things said but presently I have to read them over just to refresh my memory.

Q When you heard conversations, you believed to be involved in narcotics, these conversations didn't speak about narcotics openly, did they?

THE COURT: By openly he means, did they use the word narcotics, cocaine or heroin?

THE WITNESS: No, sir, except once they were talking about C.

THE COURT: "C"?

THE WITNESS: "C".

Q And you assumed that meant cocaine?

A Because in my previous experience --

Q Because of your previous experience with mention of cocaine?

A I was aware that "C" means -- because of my experience I was informed that "C" means cocaine.

Q You were informed of that?

A Yes, sir.

Q Does C mean anything else, to you?

A Could mean Couture also.

Q Could mean C for a hundred dollar bill?

A Yes, sir.

Q When somebody said C, it could mean any of those things?

A Could be.

Q And you decided it meant cocaine?

A In my belief.

Q If you had received a conversation and it didn't contain anything that you believed important you would discard it?

A Yes, sir.

Q When they spoke about Chinese food, do you know if they were speaking about Chinese food or cocaine?

A You have to read --

Q If they talked about suits, you sometimes thought it was cocaine?

A No, sir.

Q Did you think the suits were narcotics?

A At that time?

Q Yes.

A I thought so?

Q Yes.

A No.

Q They talked about a lot of things?

A Yes, sir.

Q But you assumed that some meant narcotics?

A I don't understand your question, I am sorry.

Q For instance, if they were talking about shoes?

A Yes, sir.

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Q You wouldn't have thought that was narcotics and you would have disgarded the conversation?

A Depending on previous conversation you have got to think -- if you go sell shoes in New York or Mexico or for 18 pairs or 4 pair --

Q Yes, in other words in order to understand what you kept or did not keep you had to assume things about the conversation?

A Yes, sir, sometimes they were saying each pair of shoes was worth I think 8000, so there's something going around somewhere.

Q In your mind you figured out that it was narcotics?

A Yes, sir, I do.

THE COURT: You knew it wasn't a pair of shoes?

THE WITNESS: Yes, sir.

Q When you say you knew it, you didn't know as an actual fact what they were talking about, it was just that you were assuming what they were talking about?

A I was assuming but my beliefs were very strong.

Q They weren't based on anything that you had seen, talked about, investigated, but rather that you

assumed from conversation with other people?

A Yes, sir.

Q And in fact, you didn't check with them or have a dictionary that you could look up into to decide that is what they really meant?

THE COURT: Do you understand the question?

THE WITNESS: I understand but --

THE COURT: If you heard 8000 for a pair of shoes and you looked it up in a dictionary you might learn what the 8000 meant?

THE WITNESS: Yes, sir.

THE COURT: You would?

THE WITNESS: No, sir, if I would mean that 8000 --

THE COURT: You would know from your common experience you don't pay 8000 for a pair of shoes.

THE WITNESS: Yes.

Q Where in these conversations is an $8000 pair of shoes talked about?

A I would have to read them --

THE COURT: It may be a hypothetical. Objection sustained. It's argumentative.

MR. IANNUZZI: I am not arguing.

THE COURT: Let's cut this short.

I am not going to permit fruitless examination to go on and on. I have had too many of these cases not to know that narcotics dealers do not get on the telephone and say, we can get $28,000 for a kilo of heroin.

I don't care what code names they used. This witness testified in the context of all of the conversations he got the flavoring what was meant.

What's the difference. If it's irrelevant it won't come in. There might be oral testimony that comes in to explain what the code names mean.

Let's not waste time asking this witness why he kept what he kept.

MR. IANNUZZI: The whole point, if your Honor please, unless I am mistaken, is to determine whether this evidence is relevant, whether it has integrity --

MR. PUCCIO: Objection.

THE COURT: I think you are 90 percent wrong.

This is to determine whether the wiretaps were lawful, if lawful whether admissible; if the weretaps were unlawful, whether they are admissible if they are unlawful.

I can only determine relevancy in the framework of the issues. If these wiretaps say, "We have five white shirts coming in," as I have heard in other cases, and this witness knows no more about it than what's in the tape, I won't hold it's irrelevant now.

It may be that a witness will get on the stand and say, "One of the defendants and myself very well knew -- as a matter of fact we sat down and agreed when talking about shirts we were talking about heroin. When we talked about 15 shirts we were talking about 15 kilos of heroin."

MR. IANNUZZI: I am trying to attempt to get what in actuality was recorded, because I suggest there has been a total destruction of evidence in this case and selectivity in this case and if someone comes in and offers testimony that is not truthful we cannot counter the --

THE COURT: That' s a wonderful argument to make to the Court of Appeals and I predict you won't get by with it so don't waste my time arguing with you so I won't listen to it.

MR. IANNUZZI: I have to preserve it.

THE COURT: You have done it a hundred times.

I will say on the record I don't believe the exclusion of other conversations at other times has anything to do with the admissibility of these conversations based upon the testimony that this witness said this is the complete conversation at this time.

It is not necessary to introduce a conversation to prove every conversation that the defendants had throughout their lives.

MR. IANNUZZI: How about the availability of tapes which might prove the contrary of what is being testified to here, should they not be made available to the attorneys and the defendants for the purposes of their defense?

THE COURT: The Government is directed to turn over all the conversations that are relevant -- the admissible conversations that it has within its possession and control.

MR. PUCCIO: We have done that.

MR. IANNUZZI: The difficulty is that this is evidenc e that the Canadian Government is refusing to supply --

THE COURT: OUr Government does not control them. 3500 says, "All the material," and Brady says,

"All the material that is within the control of the U. S. Government," not the Canadian Government.

MR. IANNUZZI: I understand that.

Then the difficulty is when working within the framework of our courts and laws to convict on evidence, is a handy excuse the Canadian Government won't supply us with exculpatory material, so we don't have to give it to the defendants.

THE COURT: The exculpatory material is in the hands of the defendnats.

They know what they said on the telephone.

MR. IANNUZZI: I am talking about the tapes, not a recreation three or four years later of a defendant's memory.

THE COURT: I don't think you heard me the first time.

MR. IANNUZZI: Yes, sir.

THE COURT: I will not bar conversations on tapes, complete within themselves, on the grounds that conversations held at another time, even between the same parties, is no longer available and was destroyed. It's on the record.

MR. IANNUZZI: I understand that.

THE COURT: That point you could make on appeal

and please argue it there.

Because it's absolutely useless here.

MR. IANNUZZI: May I just have your permission to suggest that it is not the only reason that I am asking that they be barred.

I am suggesting that this process of selectivity is grossly and gravely prejudicial to the defendants because the authorities have selected what they believe are -- and the words of this witness, as a matter of fact, what they thought was very important for the purpose of prosecution and they --

THE COURT: I will say it once more, if a man says on Monday, "I am selling you 15 kilograms of heroin,"I would not permit a conversationthat he had on Tuesday, which said, "I didn't mean what I said on Monday,"

The second conversation does not in any way modify the first conversation. The second conversation is a self-serving declaration.

(continued next page.)

MR. IANNUZZI: I most respectfully disagree with the Court.

THE COURT: All right.

Q After you listened to these tapes on the second machine --

A Yes.

Q -- then you had to record them onto a third machine?

A If we decided that they were to be transmitted on the Master tape, we'd record the important call that we thought, into the Master tape.

Q When you say, "the important call that you thought," that was with reference to an investigation that you had, and anything that you thought would be damaging, you would tape, correct?

A Yes, sir.

Q What you didn't think was important, you didn't bother with -- that wasn't important?

A Yes, sir.

Q And in making this determination, did you not also indicate that you never thought that these tapes were going to be used in court?

A Yes, sir.

Q You were just gathering intelligence for the

purpose of other investigations?

A Right.

Q You were not gathering these tapes for the purpose of preserving evidence?

A No, sir, not at that time.

Q Not at that time?

A No, sir.

Q After the tapes were destroyed, you couldn't go back and make them again?

A No, sir.

Q Did you testify yesterday to the fact that eighty percent of the conversations were recorded, but twenty percent were not?

A Yes, sir.

Q What did that mean?

I am not trying to be clever. I am trying to understand.

A On these twenty-two conversations, there is six conversations in which the dial is out.

Q Is that all you meant that was missing?

A Yes, sir. There are six conversations.

Q What percentage of the calls, however, of all of the calls put on the Master tape?

A Approximately fifteen percent -- around fifteen

to twenty percent.

Q In other words, there is another eighty percent of phone calls that you assumed were not important?

A Yes, sir.

MR. IANNUZZI: I have no further questions.

THE COURT: Of those conversations that you assumed were of no importance, what percentage of those -- in what percentage of those was either Mr. Dasti or Mr. Cotroni a party?

THE WITNESS: On all the Projects?

THE COURT: You said you reproduced on the Master tape --

THE WITNESS: Yes.

THE COURT: -- about fifteen or twenty percent; is that what you said?

THE WITNESS: Approximately, sir.

THE COURT: Of all the tapes that you heard?

THE WITNESS: Of all the tapes that I heard on Vegas 1-B and PT, it's one hundred percent Mr. Dasti.

THE COURT: All the tapes -- Let me put it this way:

On the Vegas Project tapes where Mr. Dasti was one of the parties to the conversation, what percentage of those tapes did you put on the Master tape?

THE WITNESS: Around sixty percent, sir.

THE COURT: And of those conversations, where Mr. Cotroni was a party to the conversation, what percentage of those are on the Master tape?

THE WITNESS: Around ten to fifteen percent, sir.

THE COURT: How about the conversations where both Mr. Dasti and Mr. Cotroni were the parties to the conversation?

THE WITNESS: Around ten percent.

CROSS EXAMINATION

BY MR. IANNUZZI: (continued)

Q How many phone calls altogether were there during the month of December and January -- altogether on all the Projects, if you know?

A A thousand, a thousand, a thousand, sir.

Q And of these thousands, only fifteen percent or twenty percent have been preserved?

A Yes, sir.

Q For the same reason, that you never thought that you'd have to use them as evidence in court?

A That I thought it was useless for us to keep.

Q At the time?

A Yes, sir.

Q At the time you are talking about, you didn't

know there was a Mr. Catania somewhere in the world -- in 1970?

A Yes, I knew there was a certain Mr. Catania.

Q Only because of the conversations on the tapes?

A Yes, sir.

Q You did not know he was a cooperative witness on behalf of the Government?

MR. PUCCIO: He wasn't.

Q In other words, at the time that you made all of these decisions, you did not know that some time three or four years later Mr. Catania might be a witness in a case?

A No, sir.

THE COURT: Mr. Klar.

CROSS EXAMINATION

BY MR. KLAR:

Q Mr. Couture, did you personally listen to each of these thousands of recordings?

A Yes.

Q Do you recall other conversations between Mr. Dasti and Mr. Oddo, other than the ones that you transcribed? and made available -- the Government made available to us in the 3500 discovery material?

A Yes, sir.

Q Do you recall any conversation between Mr. Dasti and Mr. Oddo during the period December 1970 to January of

1971 with regard to Christmas trees?

A I think there was one.

Q One conversation?

A I think.

Q What was that conversation about?

A I think -- I am not sure -- I think once they were talking about Christmas trees.

Q Who made the call to whom, do you recall?

A I have to refresh my memory.

Q Do you recall if Mr. Oddo asked Mr. Dasti, or if Mr. Dasti was speaking to Mr. Oddo about Christmas trees?

A If I recall it could be that Mr. Oddo was talking to Mr. Dasti about it.

Q Did he want to buy Christmas trees in Canada, and bring them back to the United States?

A I think Mr. Oddo at that time would like to buy some Christmas trees, yes.

Q You think it was strange that a man from New York would want to go to Canada to buy Christmas trees -- You thought maybe it was narcotics?

A No, sir.

Q What made you think it wasn't?

A Because I knew at that time -- I knew in New York you haven't got Christmas trees like we did in Canada.

Q I did not hear you.

A I knew that in Montreal, or around the vicinity of Montreal, you could get Christmas trees, and you could bring them to New York.

Q But they sold Christmas trees in New York.

A I know.

Q Didn't it arouse your suspicion that maybe it was a code word for narcotics?

A No, sir.

Q Do you know if Mr. Dasti had a business where he sold Christmas trees?

A No, sir.

THE COURT: You may prove that this witness made a bad choice, that he should have kept it.

MR. KLAR: Or perhaps the reference to "C" may have referred to the Christmas tree transaction?

THE COURT: Of course it's a possibility.

MR. KLAR: This witness chose to destroy that tape, and we have no way of listening to that tape.

THE COURT: Suppose you had that tape and you came in and you wanted to use that tape to prove that it was really a Christmas tree transaction, how in the world would that prove that when he had the other conversation it was not about cocaine?

MR. KLAR: That's our position. We don't know what it was about. They have taken one conversation out of context, that talks about "C" --

THE COURT: Mr. Klar, somebody told you about that conversation. This witness didn't tell it to you, so it must have been your client.

MR. KLAR: It's our position that none of these conversations have anything to do with narcotics. The point being that this witness determined in his own mind that "C" was a narcotic, and on the other hand, Christmas trees were not.

THE COURT: I do not want to tell you how to try your case.

When Mr. Catania comes in and testifies about cocaine, you ask him if he knew that Mr. Dasti was in the Christmas tree business.

Do you know what part of the year this was?

I heard of ads selling Christmas cards the day after Christmas. It could be that Mr. Dasti called Mr. Oddo down in New York and told him that they had 10,000 Christmas trees growing around Montreal, and that they would like to sell them for a fifty percent discount. That's all possible. That's not likely. That's the point.

CROSS EXAMINATION

BY MR. KLAR: (continuing)

Q Did you have control over those tapes, twenty-four hours a day?

A You mean, I could get them twenty-four hours a day?

Q Did you personally supervise the tapes twenty-four hours a day?

A Yes, right through 1972.

Q Perhaps you did not understand the question.

While you were out of the office or at home, you did not have control over the tapes?

A No, sir.

Q Who controlled the tapes in your absence?

A Nobody, sir.

Q Where were they placed?

A They were placed in the Audio Room of the Quebec Police Force.

Q Were the recordings, the devices, the tapes on the recording devices changed during the evening or early morning hours?

Suppose from 10:00 o'clock at night to 6:00 or 7:00 in the morning?

A You mean change the tapes, yes.

Q Who would change the tapes during those hours, if it wasn't you?

A If I wasn't there?

Q That is right.

A Could be Mr. Aube.

Q Who else could it be?

A In this case?

Q Referring only to this case.

A Nobody else.

Q Would Mr. Aube bring those tapes back to the Police Headquarters?

A If you mean -- If you are talking about the Victoria Club --

Q I am talking about the Vegas Project.

A You have to tell me --

Q Let's deal with the Victoria Sporting Club.

A I went each time with Mr. Aube.

Q With respect to the other Vegas Projects, Mr. Aube may make the change on the recording device himself?

A Yes, with my presence, because we were --

Q You were present at every change of the tapes?

A Yes, sir.

Q Did you personally put each one of those tapes into the vault --

A In the vault?

Q -- when you were through with them?

A It's impossible for me to say. It is either me or Aube.

Q Did Mr. Aube have responsibility to bring the tapes out during the day to listen to them?

A Yes, sir.

MR. KLAR: I have no further questions.

THE COURT: Mr. Rosenthal?

CROSS EXAMINATION

BY MR. ROSENTHAL:

Q Mr. Couture, the proceeding -- You testified before that there was a proceeding where you claimed the privilege, and you didn't testify in a proceeding in Canada that you claimed your privilege, and you refused to testify?

A I did not refuse to testify. My lawyer asked --

Q Advised you, and you took the stand, and you said that you did not want to testify?

A I didn't in any way refuse to testify, but my counsel asked me to ask for the protection of the law.

Q You yourself went to a lawyer because you thought that you wanted some legal advice; is that correct?

A I didn't went to a lawyer, they came to me.

Q The lawyer came to you?

A I am representing the Crime Probe Commission. When I received the summons, because I was assigned to a particular hearing, I went there, and the Crime Probe Commission--

Q Assigned a lawyer to you, and he felt that your taking the stand might be admitting to a crime; is that correct?

MR. PUCCIO: I object to that.

THE COURT: Objection sustained.

Q Now, Mr. Couture, did you believe that if you gave --

MR. PUCCIO: I object to this whole line of questioning as being irrelevant.

MR. ROSENTHAL: I believe this might not be the best proof, but it is some proof.

THE COURT: That he believed he was committing a crime?

MR. ROSENTHAL: That wiretapping was believed by the attorneys in Canada to b e a crime, even when committed by the Police.

THE COURT: You just convinced me. Objection sustained. You cannot ask him what someone else believed.

MR. ROSENTHAL: He obviously had legal representation. The lawyer might have told him he might be admitting to a crime. That's all I am getting to.

THE COURT: That is a privileged communication, and secondly, his lawyer's opinion is not subject to cross-examination by Mr. Puccio.

MR. ROSENTHAL: That's the whole discussion on the tapes, we cannot cross-examine what is not present. Your Honor has provided us with a defense.

THE COURT: The same argument.

MR. ROSENTHAL: We cannot cross-examine tapes if they do not exist.

MR. PUCCIO: I cannot cross-examine tapes that do exist, either.

REDIRECT EXAMINATION

BY MR. PUCCIO:

Q Are you familiar with the defendant Frank Cotroni's voice?

A Yes, sir.

Q Did you hear Frank Cotroni's voice on any of these conversations?

A These conversations, yes.

Q Let us talk about --

THE COURT: How did you familiarize yourself with Frank Cotroni's voice?

THE WITNESS: First I have to tell you during 1965 -- between 1965 to 1973, I learned who was Frank

Cotroni. I learned it because I talked to him personally a few times. Also, sir, while we were listening to Mr. Cotroni's line, we received a lot -- we intercepted a lot of phone calls in which the person that called said, "I would like to speak to Mr. Frank Cotroni."

For example, somebody is going to call and is going to say, "May I speak to Frank Cotroni?" He identified Mr. Cotroni, or Mr. Cotroni would make a call and he would like to speak to a car dealer, and he would say, "My name is Frank Cotroni, and I am calling for such and such a thing."

He identified himself.

(continued on next page.)

THE COURT: And these were calls from a telephone that was assigned to him, his telephone?

THE WITNESS: Yes. In other words, knowing that it was Mr. Cotroni, Mr. Dasti -- for example, Mr. Dasti dialled a phone number, which phone number was registered to P. Marlow, which is the residence of Mr. Cotroni, and at that place he asked for Frank, and I know for sure because I talked personally with Mr. Cotroni.

THE COURT: All right.

BY MR. PUCCIO:

Q So you were familiar with Mr. Cotroni's voice, both because of prior investigations and because you heard it during the Vegas investigation, is that right?

A Yes sir.

MR. PUCCIO: I have no further questions.

RECROSS-EXAMINATION

BY MR. IANNUZZI:

Q Mr. Couture, you say that you have spoken personally to Frank Cotroni?

A Yes sir.

Q That is to say, you and he face to face were speaking with each other?

A Yes sir.

Q When was that?

A Once, I think it's in 1970, I was assigned by Mr. Patenaude to take pictures, funeral, marriage or in clubs. I took Mr. Cotroni's -- I took one of Mr. Cotroni's pictures at the Plexi Discoteque, that is in Montreal, and at that time I went to Mr. Cotroni about six feet from him, and he was at that time accompanied by Mr. Claude Blanchard, an entertainer in Montreal, his wife, and Mr. Claude Faber, his wife, Mr. Cotroni and his wife. I took his picture.

Then he tried to -- he threatened me and he tried to break my camera. As a matter of fact, I still got this photo and I'm ready to produce it to the Court. And this is not the only photo that I took, I also took some in the burials, funerals and --

Q Other than the taking of the pictures, what other occasion besides that one where you say that Mr. Cotroni objected to taking a picture did you ever speak to him person to person - face to face?

A Yes sir.

Q When?

A At a burial, I don't recall exactly the date, he salute me, gave me this regards and once he -- because I took his picture, he was smiling and he was doing me this (indicating) and I've still got the photo.

Q Besides having the photo, the point is this, did he, when he gave you this sign of victory, or whatever it was, speak to you?

A Yes sir.

Q What did he say to you?

A At that time?

Q Pardon me?

A That particular time. He talked to me when I was taking his picture.

Q While you were looking through the camera you say that you heard him speaking to you?

A Yes sir.

Q How long did this take?

A It take at the Plexi Discoteque --

Q We are talking about when he made the victory sign, did he make the victory sign at the discoteque?

Let me finish the question and I will let you finish the answer.

Did he make that victory sign at the discoteque?

A No sir.

Q So at the discoteque he came out, you took his picture and he was annoyed by that, is that right?

A Yes sir.

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Q And he said something to you?

A Yes sir.

Q Not very pleasant, I assume?

A Yes sir.

Q Right?

A Yes sir.

Q And then what happened?

A I went out.

Q Did he yell at you?

A Yes sir.

Q And did you say anything?

A Yes sir.

Q What did you say?

A I was saying "I am doing my work." He told me that I had a big nose and he put it in the wall.

Q He put your nose in the wall?

A Right, sir.

Q Did he say this in kind of friendly conversation?

A Not at that time, sir.

Q No? That's what we are talking about. Was he excited?

A Quite a bit, sir, quite excited, yes sir.

Q And he spoke to you in a quite excited fashion?

A Yes sir.

Q How long did it take?

A This was approximately two minutes.

Q And at this time during the entire conversation he was quite excited yelling at you?

A Not all the conversation, but the first moment of it, yes, sir.

Q And what did you say, exactly?

A Well, like I told you, he told me to nose into the wall and I was a bastard and everything you could name.

Q By the way, you say there was another opportunity that you heard him talk to you personally?

A Yes sir. I was taking photographs at his brothers --

Q Funeral?

A Not brother's funeral. He's not dead yet. At his -- the girl of his brother was getting married --

Q All right.

A And Mr. Cotroni, along with Mr. Faber came into the hall of the Skyland Hotel in Montreal and when he saw me with the camera he almost ran the car on me, got out, threatened me; I took a picture of him.

Q So on the second occasion, again Mr. Cotroni was not very happy to see you?

A No sir.

Q As a matter of fact, threatened you again?

A Yes sir.

Q When he threatened you, it wasn't in an ordinary conversational tone, he was trying to threaten you, he said it in a threatening tone, right?

A Yes sir.

Q Whether he was tough or he wasn't tough, whether you were afraid or were not, he was attempting to threaten you, wasn't he?

A Yes sir.

Q You didn't stand there having a conversation?

A A long conversation, no sir.

Q Let me ask you, did you ever in your life have a conversation with Frank Dasti?

A Yes sir.

Q When?

A When he was in court in 1972, I had a long conversation with him, and while --

Q In court in 1972?

A '71 or '72.

Q Let me ask you, in 1970 --

A Yes sir.

Q -- withdrawn. When was it that you took his

picture at the discoteque?

A You mean Mr. Cotroni?

Q Yes sir.

A It's between '69 and '70.

Q When was it that you took the picture at the marriage?

A '70, '71.

Q It may have been after the time of the Vegas tapes?

A Could be, your Honor, sir.

Q So that if it was after the time of the Vegas tapes, that conversation didn't help you identify the Vegas tapes in 1970, December or January of '71.

THE COURT: Mr. Iannuzzi, you did it twice --

MR. IANNUZZI: What, sir?

THE COURT: I asked this witness whether he can now identify the voices, not before. That may be a slightly different question --

MR. IANNUZZI: Yes sir.

THE COURT: It is, right?

MR. IANNUZZI: It is. It seems difficult to explain how someone, unless of course these tapes in large were fabricated after the fact, if they were made in 1970-1971, before the man had an opportunity to

identify the voice --

THE COURT: It may be difficult for you but not for me.

MR. IANNUZZI: I couldn't imagine how someone could identify a voice he didn't know --

THE COURT: Let me explain how. I can't remember the case now, but I will try and find it for you --

MR. IANNUZZI: Thank you.

THE COURT: The law school requirement, or what we were taught for identification doesn't hold true. He must have talked to the fellow two or three times before you can say he identified the voice, that is not so. Identification is one of those facts that you can prove by circumstantial evidence. If someone listens in on a conversation and a man by the name of Frank, who owns or controls the telephone, answers to that name five times, ten times, and if, from the circumstance of the conversation, the subject matter of the conversation, you might determine that it is indeed the defendant Frank Cotroni, you don't have to show that at the time of the identification you had spoken to him two or three times on the telephone and familiarized yourself with the voice.

Are you familiar with that or should I get the

case for you?

MR. IANNUZZI: I would appreciate the case, but I would also suggest, if your Honor please, that if someone were very clever and attempted to mislead whoever might be tapping the phone and have someone else using his name, then both the person whose name was being used and the person who was speaking would be --

THE COURT: Mr. Iannuzzi, you fail to distinguish--

MR. IANNUZZI: May I finish for the record?

THE COURT: You fail to distinguish between the admissibility and the weight of the evidence, and that is your biggest problem, and there's where you and I have most of your problems. I rule on admissibility of evidence. Weight is for the jury.

MR. IANNUZZI: As a matter of law, if they can't be properly identified or in fact there is no foundation properly laid, then I suggest that that is a matter of admissibility.

THE COURT: Prepare yourself for this and get a memo up on this.

On the basis of what I heard this witness testify to, and I am not concerned with the truth of it, I must assume the truth of it, I would say that he

has identified the voice of Mr. Frank Dasti and Mr. Frank Cotroni, and if that were the only objection to the tapes I would admit them in evidence.

BY MR. IANNUZZI:

Q Mr. Couture, when you heard people answering the phone of Frank Cotroni, or someone saying, "This is Frank Cotroni." Was that the first time that you heard a normal conversation out of Frank Cotroni?

A No sir.

Q I am not talking about a conversation in 1972, I am talking in December of 1970?

A I have previously.

Q You had a previous normal conversation with him?

A Yes sir.

Q When was that?

A In 1966.

Q Where was that, sir?

A That was at the Salon Pierre Barber Shop.

Q You had a conversation with him at the Salon Pierre Barber Shop?

A I did not.

Q You did not?

A I intercept phone call at the --

Q I understand that. I am talking about a person to person conversation with him, did you ever have one before December of '70, one conversation where you were able to hear his voice as much as you have been able to hear mine right now?

A Before 1970?

Q Yes?

A Yes sir, when I was taking picture at a different funeral.

Q You said the one at the marriage may have been afterward?

A Yes, but marriage and funeral, it's not the same.

Q Oh, yes, I understand the difference and I appreciate your trying to help me out, but I have learned the difference.

Now, if the marriage may have been after January of '71 was the burial after '71?

A The burial was before '70 or '71, before.

Q So it to may have after January of '71?

A Yes sir.

Q So therefore the only time that you say you had a conversation with Frank Cotroni before December of 1970 would have been the time when he was going to put your

face through a wall in front of the discoteque?

A Yes sir.

Q Is that right?

A Yes sir.

Q And now, would you characterize that fairly as being an ordinary conversation, that is to say, carried on in a conversational tone?

MR. PUCCIO: I object to the form, your Honor. I don't know what an ordinary conversation is, first of all.

THE COURT: May I have the question.

(Question read.)

(Continued on next page)

THE COURT: I will allow it.

THE WITNESS: The first part of the conversation, I would say that Mr. Cotroni was talking very loud. Then after a while he became -- it was his natural voice.

Q He and you were having a conversation at that point?

A Yes.

Q What was the conversation on your part, what was it that you said to him besides, "I'm just doing my job"?

A He told me, "Go away, you're a bastard. Why don't you take my picture elsewhere from over here?" And he was -- they were also talking about the presence of Mr. Claude Blanchard --

Q Who else was there in the picture?

A Claude Blanchard. He said that I was a bastard because I did that to put his photo in the papers and to try to incriminate Mr. Blanchard with Mr. Cotroni.

Q Who else was there besides Mr. Claude --

A Mr. Claude Faber.

Q Anyone else?

A Mrs. Cotroni, Mrs. --

Q Mrs. Faber?

A I think Mrs. Faber -- there was a lady with them. There was Mrs. Cotroni, a lady with Mr. Faber that I thought was Mrs. Faber, and --

THE COURT: How do you spell that?

THE WITNESS: F-a-b-e-r.

Q One of the things you said would help you to identify Cotroni's voice was the fact that people would call for Frank Cotroni and someone would answer; is that right?

A Yes.

Q And you say that the fact that people called for somebody and that the person who answered said he was Frank Cotroni would help you to place Cotroni's voice?

A Would help me --

Q You didn't in fact know if it was somebody making believe it was Cotroni or in fact it was Cotroni, did you know?

A I thought I knew it was Mr. Cotroni.

Q You thought you knew it?

A I knew it.

Q That was from your experience of the time that he was going to push you through the wall?

A No, sir.

Q It was different from that?

A Previous experience.

Q Previous experience?

A Yes, sir.

Q With Cotroni?

A Yes, sir.

Q You mean wiretaps?

A Yes, sir.

Q In other words, when somebody called and somebody got on the phone and said, "This is Frank Cotroni..." --

A Yes, sir, or Mr. Cotroni.

Q Or when somebody in Cotroni's house would get on the phone and say, "This is Frank Cotroni," those previous experiences over the telephone before you had been threatened by Cotroni was the basis for your identifying his voice?

A Yes, sir.

THE COURT: Mr. Iannuzzi --

MR. IANNUZZI: I have no further questions.

THE COURT: I know you haven't, but I want to tell you, I asked my law clerk to see -- I have a card index of interesting subjects that I find interesting, and I may very well have abstracted that particular case. But I can tell you one that I tried. I think it was a counterfeiting case, and maybe Mr. Puccio was here at the time and he might identify it, I can't remember the defendant's name or the title of the action,

but it was a counterfeiting case, somebody called from Las Vegas, I think, and called the home of the defendant. He was not in. He said, "Would you have," whatever his name was, "your husband call me at this and this number."

The witness never heard this fellow's voice before. Sure enough, at the appointed time he, he gave him the time, the phone call came and they discussed the counterfeiting instrument, whatever it was.

I admitted it into evidence. It was a point argued on appeal. Perfectly all right.

MR. IANNUZZI: Amazing, Judge.

THE COURT: Not amazing, logical.

MR. IANNUZZI: It is to me.

THE COURT: Logical, makes sense.

You can argue it could have been any one of 221,9999,000 people in the United States that could have made that phone call, but those are circumstances that are taken into consideration by the jury --

MR. IANNUZZI: What your Honor is saying, but then of course it would have to eliminate every hypothesis of innocence with it not being the person.

THE COURT: That is not true.

MR. IANNUZZI: If your Honor please, I have no further questions but I would like to read or press a request that we be supplied with the machines on which the recordings were made, the machines on which the playbacks were heard and the machines on which the secondary tapes were made.

THE COURT: The very same machines, right?

MR. IANNUZZI: If not the very same, just some of them.

THE COURT: Maybe we can get the very same.

Mr. Puccio, turn over the very same machines.

MR. PUCCIO: We responded to this before, your Honor, both in court and in a letter to Mr. Iannuzzi, a copy to the Court, that we can't produce the same machines.

THE COURT: You cannot produce the same machines?

MR. IANNUZZI: I suggest that it is difficult for the defense, again, without the tapes, without the machines, to in any fashion test these tapes to determine whether they have been spliced together, whether they have been manufactured, whether they were, because of the fact that no one listened to these tapes, no one listened to the conversations, I mean, but that they were mechanically produced --

6 Couture-recross

MR. PUCCIO: Your Honor --

THE COURT: Is there any question of identification of voices on the tapes?

MR. IANNUZZI: I wou ld suggest that there is.

THE COURT: There is?

MR. IANNUZZI: I would suggest that there is.

THE COURT: I don't know whether voice prints are admissible in evidence, I have to decide that question very soon --

MR. IANNUZZI: Bell has voice print mechanisms.

THE COURT: Why don't you try it and offer it to me. Maybe the Government won't object.

MR. PUCCIO: We have sufficient witnesses to prove who is speaking on the tapes. We have witnesses who have known the defendants for years. That is not a real issue.

THE COURT: I am just trying to suggest to Mr. Iannuzzi, maybe he can bring in some testimony that these could not be the voices of these parties.

MR. IANNUZZI: If your Honor please, I know that we have cases within recent times where the tapes and the machines have been made available to defense counsel for the purpose of making determinations and to be able to marshal the defense, and I would like to

do the same in this case.

I may not be dealing with the President of the United States, but we are dealing with a person who is entitled to equal rights.

THE COURT: No one says he does not have equal rights.

MR. IANNUZZI: We are trying to get the machines and the tapes so that defense counsel might formulate some thoughts in reference to preparing a defense.

THE COURT: We will do the best we can.

MR. IANNUZZI: We are doing the best we can, but if the Canadian Government doesn't give us what is necessary then perhaps we should discontinue a prosecution which would end up possibly in incarceration of a person who is protected under the Constitution of the United States to have equal rights before the law.

THE COURT: Do I consider that a motion, because they can't produce the tapes?

MR. IANNUZZI: You can if you wish, sir.

THE COURT: Motion denied.

We want to get the record straight, that's all.

MR. IANNUZZI: No question about it. I think we are doing a good job on that, at least.

THE COURT: Anything further?

MR. IANNUZZI: Not of this witness, sir.

MR. PUCCIO: I have nothing further.

THE COURT: You may step down.

MR. PUCCIO: Your Honor, with the exception of listening to the tapes, that concludes any evidence that we wish to present. I will report now on the request for records from the Bell Telephone Company.

Yesterday we had Mr. Sovai of the RCMP make arrangements with the Canadian Bell Telephone Company to have a representative here on Thursday with the records and they consented to do that if any records existed.

I am informed by Mr. Sovai today that in speaking to the Telephone Company representative he finds that there are no records available or any records they have been able to discover at this point, with the exception of, I believe, a record concerning Santo Mendollia's telephone number. There is a record in existence -- Santo Mendollia was a subject of one of the Vegas projects, and I believe they have Telephone Company records which indicate the phone number listed to him during the time period involved here.

The reason for that is because he apparently has the same number up until today.

MR. IANNUZZI: May I suggest --

MR. PUCCIO: As far as repair records, they have no records, as I understand it, which they can furnish.

MR. IANNUZZI: If your Honor please --

THE COURT: I am sorry, but I am looking for -- these are the cards I have on the subject matter.

MR. PUCCIO: My experience with the Telephone Company in the United States is that they only keep records for a short period of time, for instance, toll call records are only kept six months and --

THE COURT: So they wouldn't have it?

MR. PUCCIO: In the United States they are only kept six months.

THE COURT: How about up there?

MR. PUCCIO: I don't believe they keep any of their records very long, and as far as determining, getting records on a telephone which is no longer -- which has been assigned to someone else, no longer to the person who had it in 1970, I would think it would almost be impossible to get those records. But we have made the request. They have agreed to come without a subpoena in the event that they have it, and it will be here Thursday morning. But as of yet they have no records.

THE COURT: Even if they don't have it would they appear?

MR. PUCCIO: To say they have no records?

THE COURT: Yes. You can ask the Bell Telephone people that question.

MR. IANNUZZI: Fine. So that Bell Telephone knows what we are interested in, Judge, I am not interested in Mendollia or Orsini's telephone or even Cotroni's telephone, I am interested in that service box into which these mechanisms were placed.

MR. PUCCIO: I spoke to Mr. Iannuzzi and I took all the information that he gave me and I gave it to Mr. Sovai and I requested exactly what he wanted pertaining to all the Vegas projects and the terminal boxes and the servicing, et cetera; it's just that it does not -- apparently is not in existence any longer.

(Continued on next page.)

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MR. IANNUZZI: My information is that it is in existence. I am not holding Mr. Puccio --

THE COURT: Why don't you put that testimony on to prove it is in existence.

MR. IANNUZZI: The reason Mr. Puccio was going to get it was that it would save us time. I can make attempts to get it, but I thought we could shortcircuit it and get it here more quickly that way.

We will have to get perhaps a deposition, Mr. Puccio and I would have to go up to Canada perhaps, after they assemble these things.

My information is, Judge, upon information and belief, that they exist.

MR. PUCCIO: I think I know where the misunderstanding is. I understand that the now famous Mr. Pierson was at the telephone company in Canada and was told to get a subpoena or a court order from a judge in Canada when he requested the records, and maybe it was inferred from that that the records existed.

MR. IANNUZZI: It was not as simple as that. We have the man who has identified exactly where they are.

MR. PUCCIO: Then I wouldsuggest you call him as a witness.

MR. IANNUZZI: Judge, I have a witness, can I put him on the stand?

THE COURT: Please do that.

MR. PUCCIO: Your Honor, with the Court's permission, I am going to allow the Canadian witnesses to to home now because --

THE COURT: Yes. There is no reason for you to stay. You are welcome to stay, of course, but thank you for your cooperation. Of course if you can induce the authorities to even bring the tapes down we would appreciate it. In the meantime, I understand I will have transcripts of most of those tapes that have not been introduced for my reading.

MR. PUCCIO: Not exactly, your Honor. You will have all the logs and transcripts or tapes during the month of December 1970 and January 1971. The defense counsel have that as well. The only additional material you will have are certain omitted logs which contain confidential information but don't pertain to this case.

As far as all the other --

THE COURT: There was a bulk of that, wasn't there? You told me -- I think I saw someplace there were like a hundred conversations that I would be

looking at, no?

MR. PUCCIO: There were probably thousands of conversations before December 1970 and after January 31, 1971, which don't pertain to this case, which appear in log form and some of them I guess in a master tape in Canada.

Those Mr. Patenaude has consented to let your Honor to listen to. I think most of them would be in French but they would make provision for a translation. It would take many, many hours, but your Honor could also inspect the logs.

We have not asked the Canadian government to translate the logs in all these other thousands of -- pertaining to all these other thousands of conversations because we have no use for a translation.

THE COURT: I intend to take that material home and read it over the weekend, and I thought it would be in transcript form, translated.

MR. PUCCIO: Is your Honor talking about the tapes we are going to offer into evidence?

THE COURT: No. Other tapes that I can view and determine it should be turned over.

MR. PUCCIO: No, we don't have that. We don't have all these other tapes. There are presently logs

for all the other conversations which are in French and are up in Canada and may also be -- I'm sure there are other recordings that are on master tapes, most of it again, probably in French. We have never obtained that. It is at the Quebec Police Force Headquarters in Montreal and Mr. Patenaude offered -- I tend to think its voluminous, volumes and volumes of logs and tapes not pertaining in any way whatsoever to this case, and Mr. Patenaude offered to have your Honor listen to them up in Canada.

MR. IANNUZZI: May I suggest that it is repeated and I don't ascribe any --

THE COURT: I think the Canadian visitors want to make a plane.

If you want to go on, it's all right, go.

MR. IANNUZZI: I might just indicate that Mr. Puccio has several times indicated that these conversations are not pertinent. I suggest that they may not be incriminatory but they may very well be fit material for use by the defendants or even -- they may even have some relevancy because of the fact, as your Honor has so well indicated, people don't talk about heroin and cocaine, they talk about Christmass trees and shoes, etc., and the man who testified, Mr. Couture, said he

made determinations, subject to determinations, it may be there are other things that are relevant indicating things like --

THE COURT: Mr. Iannuzzi, I try to keep my eye on the ball. I am just trying to determine what is admissible.

Suppose it was shown that the parties, the defendants, spoke 500 times before they even started to record this, that was something that was never recorded, does that mean what was recorded should be barred?

The next step: Does that mean because something that was recorded in another conversation and on another day that was destroyed should bar the conversation that was recorded?

MR. IANNUZZI: I understand what your Honor is saying. But I am suggesting that that doesn't mean that there can be a process of selectivity where the prosecution can pick things and perhaps distort their selectivity out of context the actual thoughts.

THE COURT: I think you are using a phrase in different context. Everybody is wary of any discretion the government makes, selective prosecution, selective evidence. The government selects evidence every time

it presents a case.

MR. IANNUZZI: Yes, I understand that.

MR. PUCCIO: I might say, your Honor, if we had a live witness who overheard twenty conversations in a restaurant and only testified to five, we wouldn't as far as the defendant -- we would have, as far as the defense is concerned, a less desirable situation than we havenow.

Here, as far as the conversations are concerned that we are offering, we have the actual conversations recorded.

THE COURT: The only real problem I have are the legal issures I alluded to. I am paying little attention to all the other arguments about failure to have the dial number on the tape, the destruction of the tape, the -- as long as I find it is in good faith and there is nothing in the evidence that indicates that the destruction was anything but in good faith, it was a routine matter, and Mr. Iannuzzi brought it out. They never intended to use this as evidence. It was part of a general investigation.

MR. PUCCIO: Which is the problem your Honor is concerned with.

THE COURT: Whether it was lawful to wiretap

and, if unlawful, whether it is nevertheless admissible here, and the subsidiary questions whether if it is admissible, whether or not it is admissible in Canadian courts after June 30, 1974?

Even if it is not admissible there, whether it nevertheless would be admissible here.

I just reread a part of Toscanino and it is very interesting, something that was hidden there and I didn't realize that Judge Mansfield said flatly that Title 3 has no application extraterritorially. He does bring in one of the definitions under 25:10 when he says that the telecommunications means the use of telephone wires in this country or through this country, but that is the closest he comes to Mr. Iannuzzi's argument.

MR. PUCCIO: I might also point out, your Honor --

THE COURT: At any rate, those are the issues before me. That's why I say, this entire hearing for my purposes -- maybe I exaggerated or minimuzed when I said it was a two hour hearing, but it certainly should not have taken more than a day.

But toomuch irrelevant material is going in. But it may serve a good purpose because if the defendants are convicted, with all this pretrial discovery, I can't see how they can ever claim that the

government hid anything. So I have a little comfort in that. Maybe it's not all wasted.

(Continued next page.)

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MR. IANNUZZI: I might suggest that at page 279 of Toscanino, the Judge does indicate that the intended use of Title 3 was to refer to communications through our nation's communications network.

THE COURT: I read that.

MR. IANNUZZI: This is one of the claims of the defense.

May I proceed, sir?

THE COURT: Yes.

J A C K K O P P E L L , called as a witness, having been first duly Sworn by the Clerk of the Court, testified as follows:

THE CLERK: Will you state your name and spell it for the record.

THE WITNESS: Jack Koppell, K-o-p-p-e-l-l.

DIRECT EXAMINATION

BY MR. IANNUZZI:

Q Mr. Koppell, what is your occupation, sir?

A I am the Director of Engineering for Pacesetter Communications Corporation in New York City.

Q And what is Pacesetter Communications?

A Pacesetter Communications is a manufacturer and distributer or telecommunications products.

THE COURT: Will you spell that name.

THE WITNESS: P-a-c-e-s-e-t-t-e-r.

Q Do you have any degrees, in reference to electrical or telecommunication engineering?

A Yes, sir. I am a degreed electrical engineer. And I have taken numerous courses in telephony.

Q And can you give the Court some indication of your background, your associations, your professional experience?

A I spent ten years with AT&T Long Lines Department.

Q What is the Long Lines Department?

A That is the department within the AT&T, within the Bell System, that provides intercommunication between the States or in between States.

Five years were spent in New York City in the Plant Department in a test board capacity.

Five years in an engineering capacity in the Area Engineering Office.

After that, I spent eight years with Litton Industries. The major project during that period was as the program manager for a project that involved a world-wide department defense network, wherein our division was the integrating contractor for four independent telephone companies.

Q Would telephone calls between the United States and Canada, in your experience, be utilized in the United

States telecommunications network?

A They would.

Q Would calls between Canada and Mexico utilize the United States telecommunications network?

A They would.

Q I'm going to ask you to assume certain facts, if you please, for the purpose of making a determination and opinion. I am going to ask you hypothetical facts, and based thereon, I will ask you if you have an opinion.

I'm going to ask you to assume that on a particular phone --

MR. IANNUZZI: Withdrawn.

Q Have you any experience with Canadian Bell Telephone equipment?

A Well, most of the equipment that is made by Bell of Canada is made by the equivalent of their Western Electric. Generally speaking, they share patents, or they work under patent arrangements. And the telephones that are produced by or rather, are used by Bell of Canada are identical to the telephones that are used in the United States.

Q And have you become familiar with the equipment used by Bell of Canada?

A Only inasmuch as that it would be very, very similar to the equipment that is used by the Bell System in

the United States.

Q I am going to ask you to assume that there would be a telephone in an exchange, a 677 exchange, and that a lineman climbed a pole and tapped directly into that phone by hooking a wire to the terminal ends, carrying the drop wire to a location, and at that location, attached the wire to an automatic starter, and an automatic recording device;

I am going to ask you further to assume that another phone, which was a public phone -- Let me ask you as an aside, Does a public phone have the same kind of terminal box as an ordinary phone?

A It would look similar. The box would look similar. There are additional wires on the public telephone for the purpose of collecting the money. But it would look the same.

Q Well, does a public telephone have a terminal box in the same place on telephone poles? In other words, would they be in the same box with private wires?

A It could very well be, yes.

Q Would you assume further that there would be another 667 exchange number, public telephone, and this too was -- two of these terminals of this phone were attached to a wire which became a drop wire which was brought to the same location as the first, and that this, too, was connected

with an automatic starter and an automatic recording machine.

And I would ask you to consider that there would be another phone on a 488 exchange. And that this phone had its terminal point in a terminal box in a garage; that it was a two part box, that is to say the incoming lines came in on one side of the -- and the apartment line was on the other side.

A Just may I have a piece of paper so I can try to draw what you want?

THE COURT: You have a diagram, don't you? That Exhibit. Aren't you following that?

MR. IANNUZZI: Yes, we have that.

THE COURT: Why don't you show it to him?

MR. IANNUZZI: Well, we actually have slides of this, also.

THE COURT: All right. It might be easier to follow.

MR. IANNUZZI: May I have this marked for identification purposes, if your Honor pleases?

Does Mr. Puccio have the photographs of the design made by Mr. LaVallee?

THE COURT: I thought you produced one, too? No?

MR. IANNUZZI: I produced some pictures. I have a 4 by 4 picture. I didn't bother to bring it in, be-

cause we have the slides. I don't have the diagram. I have a copy of a diagram.

THE COURT: All right, do you have it so far, Mr. Koppell?

THE WITNESS: So far I have two phones in the 667 exchange. One private phone. One pay phone.

O Yes.

A And a third phone someplace in the 488.

O Yes.

A 448 and 667, are co-located, or are they several miles apart?

THE COURT: I didn't mean that, Mr. Puccio. I meant --

MR. PUCCIO: The slides?

THE COURT: The layout showing the wires going from house to house.

MR. PUCCIO: We have the slides.

THE COURT: Only on the slides?

MR. IANNUZZI: I have some photographs.

THE WITNESS: If you will keep describing it.

O I will describe it to you.

A Two phones in 667, one pay phone, one private phone.

O Now, we have a phone in 488. It is in a different exchange, and it is in a different central office.

A Okay.

Q A person rented a telephone under the ordinary intention of having a private wire. And the wire was rented in a 488 exchange. In fact, the phone terminated in the same box as a 488 number in question.

And then someone --

A A fourth phone? You are describing now a fourth phone?

Q Pardon me?

A Is this a fourth phone you are describing now?

Q Let's say it is 3-A. There is a third phone which is 488, and then there is a second phone rented by another party.

A Okay.

Q Under a subterfuge, merely to have the terminal ends in the same terminal box as the first phone.

A Okay.

Q And someone came in and disconnected the instrument that is on 3-A, the 3-A phone.

A Yes.

Q And thereafter put an induction coil between the two phones in the same terminal box and connected the suspect phone, if I can refer to the first phone as the suspect phone, but one end of this induction coil connected the Central Office

Service Line of the second phone to the other end. And there were several Central Offices between the 488 exchange and --

A 667?

Q And let's say that the telephone was thereafter through the Central Office of the Police Headquarters, brought back to Police Headquarters, where an automatic starter and an automatic machine was attached to that second wire. The second wire, so-called, in other words, the second number, so-called, and when contact was made, the line was left open for a period of perhaps a year or a year and a half. That the exchange of the Police Department was completely different from 488 and 677. And that it was separated by some eight miles from the 488 exchange;

Consider further that another phone, a 256 exchange, again completely separated by Central Offices from 488 and 677, was tapped into in the same fashion as the third phone, that is to say, there was an induction coil by means of a wire that was opened for six months or a year or a year and a half, connected into Police Headquarters;

Assume if you would that there were eight such telephones, and that in Police Headquarters, in fact, there were eight phones that were open on a twenty-four hour dedicated basis, connected with phones -- one phone in the 488 exchange, and two phones in the 566 exchange -- make it seven phones that

were open totally in the Police Headquarters Central Offices.

We are dealing with the 677 exchange, 488, 256 exchange, 842, 849 exchange, 274 exchange, 256 exchange, and 374 exchange;

Now, I would just add one further note, that there would be an additional phone which was tapped into for a very short period of time that was in a hotel. It was a public phone booth, where someone went into the basement, into the terminal box, and hooked directly to the end terminals of the phone, directly into a portable recorder:

I want you to assume further that on occasion there was an indication of bad connection, not very often, perhaps, but there was an occasional indication of bad connection of the said lines --

MR. IANNUZZI: May I just have a moment, sir?

(continued on next page.)

Q I want you to assume further -- Withdrawn.

I want you to assume that these induction coils were not of standard manufacture type, but were put together by non-professional individuals.

I want you to assume further that on occasion a circuit was loose in the Telephone Company Central Office, and an employee might have seen one of the rotary switches open, and if no conversation were contained thereon, he might have closed it, and a phone call might have been made to the Central Office -- to the Central Office of the Police Department and to the Central Office of the number or terminal box to open the line again.

I would like to know if based on those facts you would have an opinion with a reasonable degree of telephony whether or not the said setup of the telephones and the tapping thereinto diminished or interfered with the intended use of the Bell System or Bell equipment?

Let me add one further thing: In finding the wires -- In finding the wires, a person cut through the insulation of several of the terminals to find the proper wire for which he was searching, that he cut through the insulation down to the wire itself, and that these were left in that condition, that these dedicated wires, -- the injured wires -- let me say the wires through which the insulation was cut,

was left for a considerable period of time, and remained so until this date, as far as we know, and consider that these dedicated wires in the telephone exchange of the Police Department were open for approximately a year, a year and a half, all the time, and assume further that during the same time the Police Department was undertaking that Project -- Withdrawn.

Just assume those facts.

A Can I ask one question? This is a dialed-up connection from the Police to this induction coil which is now monitoring the suspect phone?

Q Yes, it would be in the same terminal, or outside or near the terminal box of the suspect phone, connected to the suspect phone so that the two phones in the terminal box would be connected by way of an induction coil, and then it was stretched back to the Central Office -- through the Central Office of the Police Department into the Police Department via an automatic starter, and into an automatic recorder, and then the phone call would be made to the rented number, and the line was kept open for possibly a year to a year and a half. Do you have an opinion as to whether or not this system, as described, diminished or interfered with the intended use of the telephones, the Bell System and the Bell equipment?

A The line is dialed up from the Police, left open, and it's -- and the switching equipment that is in between the

448 exchange and the Police Headquarters stays up? In other words, it is dialed once and the number stays there?

All right, the first comment would be that the equipment per se was not designed to function in that capacity.

Q What equipment?

A The telephone equipment -- the switching equipment in the Telephone Central Office is not designed to stay up permanently, as you would call it. This rotary switch that you are talking up is a -- you could call it a motor-driven selector switch that goes up and rotates around. That switch itself has like a wiping action on the contacts, and in the course of a day it may go up and down a hundred times, and that would tend to keep the contacts from oxidizing. If you would dial it once and leave it there, you would say that that particular switch itself would stay in the up condition. That is not the way it was intended to be used. The lines, of course, between the Central Offices -- in between the Central Office --

Q Please assume in some cases there may have been up to half a dozen Central Offices from the Central phone to the Police terminal point.

A Those lines, generally speaking, are engineered on the basis of traffic statistics, which say that -- let's say, between the 448 exchange and the Police exchange there was enough traffic to justify the construction of let us say three

dedicated paths between those exchanges.

Q What do you mean by that?

A In the telephone network, to get in between two exchanges, or two cities, you would decide that you have enough traffic -- enough calls between exchange number one and exchange number two to route the call.

In other words, when somebody picked up the phone, let us say, in the 448 exchange, and wanted to dial a number that was in the same exchange as the Police -- let us just say, that that is 123 exchange -- the switching equipment would seek out a path between 448 and 123.

Now, the amount of direct connection in between those two, if any, for there may be none, because those two places are remote, and there is not a community of interests where people call back and forth, but the amount would be determined, based upon the statistical probability that the Telephone Company would have, perhaps, three or four or five pairs of wires between 448 and 123, so those pairs of wires are called trunks that go between Central Offices. So now, if a trunk line was kept up constantly, that would diminish the probability of somebody in the 448 exchange from reaching the 123 exchange on a direct trunk basis.

Now, the switching equipment is also designed for an alternate route. If that direct connection is busy, it might

seek out a different path. In other words, built into the logic of telephone switching equipment would be, say, if the route between 448 and 123 is busy, to route the call via a different Central Office.

Now, the exact configuration in Montreal I am not familiar with, and I do not know how or which way it would be done. Generally speaking, there would be some dedicated trunks in between, and then a method of alternate routing, so now the dialed-up connection that was left up permanently would diminish the probability of getting through on the direct route, and would cause a shift of service to an alternate route, and, depending on the time of day that the dialed-up connection was made, and the condition of the telephone network at that time, you would have one or two or three or four Central Offices that those trunks would be tied up to.

THE COURT: We will take a five minute recess.

(Recess taken,)

THE COURT: If you want to know about authentication, you might read Section 226 of McCormick on Evidence, the Handbook Series.

MR. IANNUZZI: Section 226?

THE COURT: Yes.

MR. IANNUZZI: On evidence?

THE COURT: McCormick on Evidence.

MR. IANNUZZI: Yes.

Shall we proceed?

THE COURT: Yes.

DIRECT EXAMINATION

BY MR. IANNUZZI: (continued)

Q Mr. Koppell, would you continue with your opinion?

A Just to backtrack a little bit, I believe I am answering the question that was directed at me that said what harm or interference would come to the telephone network by such an operation?

Q What interference or harm would come not only to the network, but the service and the use of the equipment -- intended service and intended use?

A Number one, I mentioned that the switching devices that were used to make or complete the connection in the Central Offices were not intended for a full-time usage, rather an up-and-down usage, instead of a full-time usage, and more than likely, that would cause them to fail much earlier had they not been.

I believe I mentioned secondly that the full-time usage of the facility between the Telephone Central Office, which I called a "trunk" would serve as a blockage to the telephone network to some degree because it would reduce the number of trunks available. It would like take one trunk out of

service.

Q Would that be equivalent to say an office which had four or five trunks into it, although maybe there are ten telephones, anticipating that only four or five would be necessary to handle all the traffic, and somebody opening a wire would totally take that out of the use of everyone in the office, but this would be on a broader scale?

A The scale would depend on the number of subscribers served by the particular exchange. Exchanges in New York City could have up to 10,000 subscribers. That would be a maximum of course, but I could envision other exchanges with a thousand, or as low as a hundred.

The exact amount of blockage or degradation would be something that you could calculate on the basis of exactly what was there, and taken away, by this type of usage.

In addition to the Central Office, the path through the Central Office -- In other words, a switching system you would think has an input and an output, and there are a limited number of links through the switch that exists, and by keeping the link permanently tied up, once again that would be a degradation of service in the exchange.

Of course, a link is tied up every time a phone call is made, except you would anticipate that the link is tied up six minutes per call on an average, and depending on the

number of calls, but certainly not on a full-time bases, so the paths through the switching system would be diminished.

Of course, you mentioned in the beginning about cutting insulation on a wire. It is pretty obvious if you cut -- that the insulation is there for a purpose. If you cut that, that is going to eventually lead to trouble. The wire would tend to oxidize, and could become brittle and break, et cetera.

Q Could you indicate whether or not, when you have seven lines in the same exchange, what would be a dedicated line?

A Well, you have to be careful in telephone terminology, between a dedicated line, and you mentioned originally a private line that was rented. Perhaps it is easier for everybody to understand when we used to call it POTS, Plain Ordinary Telephone Service, which everyone has in their home, and a private line or a dedicated circuit would be something that was permanently established between two locations, and our terminology here in the United States is a private line would be something that was established on a full-time bases.

fls

(continued on next page.)

Q Well, I am not sure that this would be so. In the stock brokerage business, they use telephone lines that are dedicated lines for their tickers, et cetera?

A Yes.

They do not go through the switching equipment. When you pick up your phone, you have a dedicated line that goes between your phone and the Telephone Central Office, and from there to the rest of the world. You share that with everybody else that would have an opportunity to use that.

Q If the Police Department had in their Central Office seven phones open constantly, what, in your opinion, would that result in as far as intended use of the telephone service and the telephone equipment?

A It would diminish the capability of that Telephone Central Office to serve everybody in the Central Office, because of those seven POTS that were up all the time.

Q Well, what would be the ordinary number, say, in a city the size of Montreal, which I would assume has a population of two million people, what would be the ordinary Central Office -- What would the ordinary Central Office handle?

In other words, in a cosmopolitan area as New York, what would a Central Office handle?

A That's difficult if not impossible to answer. If you take three digits, the next four digits leave you with the

possibility of ten thousand additional numbers. Very rarely will you ever find an office with all ten thousand numbers used up. Generally speaking, an office would be established in an area with as little as 500 or a 1000 people. With the first three digits the same, and the next different, depending on the age of the office, where exactly it was located, would really determine the number --

Q How many dedicated lines or direct lines between the Central Office might you anticipate there being?

A Once again, that's difficult, because it depends -- Just to back up a little bit:

The Telephone Company network is designed on a heirarchy basis, where your first attempt is usually made on a direct trunk route, which would mean for instance from the 488 exchange to the 123, which I made the assumption was the Police exchange. That would be the first attempt to make the connection. Failing that connection, it would be an alternate route that would be to an office which is considered of a higher level.

In other words, the 448 would be what they call an end office, or the last stop, so to speak, and then it would have direct trunk routes to 123, or might not have direct trunk routes to 123.

To give you an analysis, in the United States,

from the North Bronx to the south of Brooklyn, more than likely there does not exist a direct connection between those two Central Offices, and there may be four or five Central Offices that that call proceeds through to reach its end office.

Q Well, if you could estimate the anticipated number of lines that a Central Office might have, using the most -- In other words, say 7,000 subscribers, which you would describe as a fairly busy Central Office --

A Very busy.

To give you something typical that you are relating between two Central Offices, eight miles apart in the city of Montreal, I would guess that there would be somewhere between three and ten direct trunks in between those Central Offices.

Q If the Police Department used up seven of them on a dedicated bases --

A I mentioned the 448 exchange, which you said there was like ten. They may have used up two of the ten.

Q Would you estimate that as being a substantial interference when they were using seven at one time?

A I would say that there would be an interference. The word "substantial" -- The telephone network, you have to understand, is designed to function on alternate routing bases, if you do not complete on your direct route, you alternate route.

When you alternate route, it is not as economical, because now you use up one trunk to the intermediary Office, and then the second trunk to the place that you want to get to.

Q When you have a dedicated line, does the Telephone Company charge a different rate than for Plain Old Telephone Service?

A Yes, substantially different rate.

Q Substantially different?

A Yes, sir.

Q If the Telephone Company were aware of the fact that you wished to have a dedicated line, would they rent you one on the same basis as a POTS?

A No.

Q Is it intended by the Telephone Company that the person who rents the telephone wishes to keep it off the line twenty-four hours for a year?

A No.

Q Let me ask you about diminution of specific telephones involving the 677 exchange, the ones that were tapped directly into.

Would there be interference with the intended -- interference with the intended use of the telephone as a result of being tapped directly into it, as indicated by the hypothetical question I gave you?

A Would there be interference with that particular telephone?

Q The use of the telephone service, and the intended service?

A Of that specific telephone?

Q Private service rendered by a subscriber as a result of the tieing-in directly to it by way of a tap?

A Unless he did a botched job, it shouldn't but if they cut the insulation, if they made a poor connection --

Q Is it your testimony that a direct tap does not diminish the service of the telephone?

A I could measure that the service has been diminished with an instrument.

Q There is a measurable interference with the service?

A On that bases, yes.

Q Let me ask you what does interception mean in terms of telephony and the Bell System -- What is an interception?

A An interception, I would say, would be a hearing of a message that was being transmitted by a third -- between party one and party two, and a third party happened to hear that message.

Q In ordinary telecommunication understanding, is

an interception an interference with -- the obvious interference with a message?

A No.

(continued on next page.)

Q Is it necessary to terminate the call so that it doesn't reach the destination of the interception?

A No. I think that perhaps to give you an example, you might refer to the operator that comes in to ask you for the extra nickel in the phone as an intercept operator.

Q As a matter of fact, that is what it is called, isn't it?

A That's correct.

MR. IANNUZZI: I have no further questions at this time.

THE COURT: Do you have any questions, Mr. Klar?

MR. KLAR: No questions.

MR. ROSENTHAL: No questions.

THE COURT: Do you have any questions, Mr. Puccio?

ME. PUCCIO: Just a couple.

CROSS-EXAMINATION

BY MR. PUCCIO:

Q Mr. Koppell, you worked for AT&T for ten years, was it?

A That's correct.

Q I suppose you are familiar with the procedure that is used by law enforcement agencies to conduct a wiretap of a telephone?

A I would guess that there was many, many ways of doing it. This is a particular way of doing it. Most certainly you could do it a lot easier than this.

Q Well, let's take it the way that it was done in the hypothetical example Mr. Iannucci gave you.

Is it your testimony that there would be no diminution of service on the so-called suspect phone; in other words, a person using a suspect phone, if the interception was done properly, or the wiretapping was done properly, would not notice that the phone was being tapped?

A That's correct, he would never know it.

Q So in using that phone, the subscriber would not have his callinterrupted or the voice on the other end of the phone -- the reception would not be diminished, the voices would not be any lower or anything like that, is that correct, under normal conditions?

A Well, you mentioned a bridge tap. We mentioned two different things, one was a direct tap and one was a tap by an induction coil.

An induction coil tap you should never -- you could not measure that it was there, it would not detract from the level.

A bridge tap connection, which I would call a direct connection to the wires, more than likely would

create some level of reduction, depending on how expertly it was done and how closely it was done to the wire, but --

Q But you say --

A The person that was using it would not be able to know that it was on there unless you made some --

Q Aside from some scientific calculation, I think you referred to some equipment you might use to determine diminution of service, would there be any noticeable diminishing of service by the use of either of those two methods, either the bridge tap or the induction coil tap?

A The subscribers would never know it.

Q Now, you were also asked about a situation where a call is placed, let's say, from phone A for phone B and the wire is kept open for a long period of time. Are you familiar with that type of situation?

A Yes.

Q In the City of New York when you worked for the telephone company, was there any law or regulation of the telephone company that prohibited one from doing it?

A To me that's wiretapping is what you are saying, is there a law that exists against wiretapping?

Q Let's take this situation: Could I pick up a telephone today and call an agent in the Bureau of Narcotics, or let's say the Drug Enforcement Administration, and both

of us would not hang up the phone and we would just leave the line open, if I paid for the call, would I be permitted to do that?

A In New York City there is message units so that you would be paying so much per minute and you could do that, yes.

Q Provided I had the money to and I wanted to pay for a year long call, is there any law against that?

A No.

Q Is there any regulation of the telephone company that forbids thatthat you are aware of?

A No. But I would say this, the telephone company would -- you would more than likely get into quite a bit of trouble with it because it would fall down for various reasons. The system --

Q If every time there was some difficulty I hung up and dialed the number again --

A And paid again?

Q And paid for all the time I spent on the phone, would there be any o bjection to it on the part of the telephone company?

A Well, I think they probably would tell you that why don't you get a private line, but --

Q In your experience, has the telephone company

ever sent letters or brochures to individual subscribers when they obtained a telephone, notifying them that they shouldn't make a long telephone call, let's say a two-week telephone call or a month telephone call?

A Not to my knowledge. I might just add, in the long line department surveys are made, and if there were considerable amounts of what we call traffic in between those two locations, we would tell the company that, "Gee whiz, why don't you get a private line?" because the long lines people were in the business of selling these direct dedicated private lines. So if they used it very often, they might tell him, "Hey, you are calling Georgia often. Why don't you get a private line?"

Q That would be a recommendation made by a telephone company representative?

A That is correct.

Q But in your experience, the telephone company has no objection to the length of any particular call one might make as long as the subscriber is willing to pay for it?

A That is correct.

Q And if a subscriber, let's say, in New York City made a telephone call for two weeks from Brooklyn to the Bronx, would that interfere with the telephone service

of other telephone subscribers in Brooklyn or the Bronx or any place in between?

A You are saying the marginal -- it would not interfere with the service of everybody else? It's one of the things, the telephone network is designed on the basis of probability, and the probability is that you are going to have X amount busy at a certain time, and when you change the basics of the probability by making a full time instead of a short time, it changes the configuration of the system.

Now, to what extent, that is the next question.

Q To what extent?

A As I say, that depends on how many there are. Between two busy exchanges in Manhattan, you'd never know the difference.

Q Let's take a city like Montreal and say that sev en or eight telephones at a given location are used to call other locations continually for a month period, is that going to interfere to any great extent with the telephone service in Montreal where I am sure there are tens of thousands of telephones?

A Stays open all the time or redials?

Q Every time there is some difficulty, or even on a periodic basis there is if there is no difficulty, the

numbers are all redialed?

A Well, the telephone equipment would be the thing that would suffer by leaving the circuit up all the time because it is not built for that kind of service. Whether all the other subscribers in the police exchange would be degraded by it somewhat, or perhaps as time went on the telephone company put extra lines in to take care of that --in other words, if an engineering study said you need ten lines between locations -- two locations and, why, you had a lot of overflows, I mean this is measured, for instance, and you would know that you would need -- you have overflow traffic that are not completing on a direct route, you would put in twelve next year or fourteen -- that would be a standard way. The second year, you'd never know the difference.

Q In your experience, and directing your attention to telephone poles and terminal points at telephone poles or in basements or wherever, in your experience have you noticed that insulation on wire is removed near a terminal point?

Maybe I should put it this way: Isn't it a fact that there are very often exposed wires at terminal points with no insulation?

A Well, if there are no insulation, it should

be in an indoor location, let's say, but the insulation is removed for the last piece before you make the connection; you have to remove the insulation to make the connection at the connection point.

Q And isn't it a fact that because of weather and other conditions after a period of time that exposed wire becomes brittle in the ordinary course and has to be changed,or are those wires at terminal points on telephone poles there forever?

A Well, usually you would insulate that box if it was out on the outside or if you had a splice, you would tape it up and seal it.

If you can envision a wire that came from a pole to somebody's house and there was a break in the middle, let's say by a tree or a squirrel bit into the wire, that's not -- that is exposed to the elements and that break in insulation is going to eventually cause a failure.

MR. PUCCIO: No further questions.

REDIRECT EXAMINATION

BY MR. IANNUZZI:

Q You indicated that the telephone company has no objection to persons using a phone if they pay for it, is that correct?

A Generally speaking, yes.

Q And in New York you say there is a message unit system and therefore you pay for the service if you keep it open?

A That's correct.

Q And if you are in a situation like Montreal and there is no message units and you are paying six or seven dollarsfor the service and you are using dedicated lines twenty-four hours a day, are you paying for the service?

A No. You are not paying for a private line service, you are paying --

Q And the telephone company would be willing to rent private lines to people if they wanted it done?

A I would imagine that they would.

Q Isn't that what business they are in?

A That's correct.

Q If somebody steals their service by subterfuge of wanting a Pots, plain old telephone service, and uses it for a dedicated line, are they not in fact --

MR. PUCCIO: Your Honor, I object to that question. There is clearly no service being stolen if the telephone company does not tell you that you can't do that.

THE COURT: It is objectionable for a different reason. This witness demonstrates no expertise on

the policy or the charges of the Canadian Bell.

MR. IANNUZZI: We have it in evidence already, Judge, from Mr. Lavallee; he testified to it.

THE COURT: I will pay no attention to it. Go ahead.

R2 MR. IANNUZZI: It is in evidence, Judge. I am asking him on a hypothetical basis.

THE COURT: Why ask this witness, who professes to know nothing about it?

MR. IANNUZZI: I am asking him whether or not the telephone company has a different service for people who want a dedicated line, Judge.

THE COURT: Do you know that up in Canadian Bell?

THE WITNESS: I would assume that they do because --

THE COURT: That is just an assumption, right?

THE WITNESS: It is an assumption I would say based on normal telephone practice. A company with two offices, let's say, in two parts of the city, having a great deal of communications, would very likely have a dedicated private line.

THE COURT: Go ahead. Anything else?

Q Can a tap such as is merely with an induction coil operate?

A You said merely with an induction coil?

Q Yes.

A You need more than just an induction coil. Just an induction coil wouldn't work. You need --

MR. IANNUZZI: Thank you.

THE COURT: Anything further?

MR. PUCCIO: Nothing further.

THE COURT: You may step down.

(Witness excused.)

THE COURT: This hearing will continue at ten o'clock on Thursday.

MR. ROSENTHAL: Before we go, your Honor, I would like to be excused from that. I think that Mr. Iannuzzi and Mr. Klar, whose interests are the same as mine -- I have a matter on early that morning and I also have a prisoner being brought over on a trial that is beginning to start. I don't think that our interests are different and I think that they can represent my interest quite well, if Mr. Klar would not mind at all.

MR. KLAR: I have no objection. I would only ask that perhaps the hearing could commence at eleven o'clock on Thursday. I have several matters I would like to take care of Thursday morning.

MR. PUCCIO: I am just wondering --

MR. KLAR: In view of the fact that Monday and Tuesday I have not been in the office at all.

MR. PUCCIO: I am wondering what we have further on Thursday.

THE COURT: Did you hear of Parkinson's Law that the amount of work is equivalent to the available time?

MR. IANNUZZI: That's true.

THE COURT: In other words, if I have six hours available, there will be enough testimony for six hours.

MR. PUCCIO: I don't know of any other witnesses that are going to appear other than the telephone company representative, who is going to say that there are not any records, for the most part.

THE COURT: Let us wait and see. Do you plan on coming in Thursday?

MR. PUCCIO: Yes, I will be here.

THE COURT: Eleven o'clock on Thursday.

(Trial adjourned to Thursday, January 2, 1975, at 11:00 o'clock a.m.)

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IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D. N.Y.
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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

-against-

73-CR-898

FRANK COTRONI, FRANK DASTI and PAUL ODDO,

Defendants.

United States Courthouse
Brooklyn, New York

January 2, 1975
10:00 o'clock A.M.

B e f o r e :

HONORABLE JACOB MISHLER, Chief U.S.D.J.

I hereby certify that the foregoing is a true and accurate transcript from my stenographic notes in this proceeding.

Official Court Reporter
U.S. District Court

HENRY SHAPIRO
OFFICIAL COURT REPORTER

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Appearances:

DAVID G. TRAGER, ESQ.
United States Attorney
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BY: THOMAS PUCCIO, ESQ.
Assistant U.S. Attorney

JOHN N. IANNUZZI, ESQ.
Attorney for Defendant Cotroni

MICHAEL KLAR, ESQ.
Attorney for Defendant Dasti

GERALD ROSENTHAL, ESQ.
Attorney for Defendant Oddo

THE COURT: Are you ready to proceed, Mr. Iannuzzi?

MR. IANNUZZI: I asked Mr. Puccio to have Mr. Gallagher and Mr. Sovai produced, and he said that he would make them available.

THE COURT: Do you have any other witnesses?

MR. IANNUZZI: No, I do not believe so, sir.

MR. PUCCIO: Your Honor, we received a call this morning from Mr. Sovai, and he indicated that the gentleman who represents the Canadian Bell Telephone, cannot be here until 3 o'clock.

THE COURT: How about Sovai and Gallagher?

MR. PUCCIO: Your Honor, on Tuesday, Mr. Sovai indicated that he would be here with the Telephone Company representative, so I did not make any special arrangements as far as he was concerned.

He indicated to Agent Tobin that he could not be here, but that the Telephone Company representative will be. I suppose we can call back and have him here with him.

THE COURT: How about Gallagher?

MR. PUCCIO: He is in France.

As I understand it, Mr. Iannuzzi wants to question Mr. Gallagher and Mr. Sovai as to whether there was any United States Government participation

in the wiretapping project. I indicated that I would have them available. It would have been difficult to get Mr. Sovai here before -- Mr. Gallagher here from France before the end of the year, but I will have him here, I suppose, -- he is scheduled to come in Saturday.

I have spoken to Mr. Gallagher and I have spoken to Mr. Sovai and I do not see that the questioning of them will be very lengthy.

Maybe we can do it before the jury is selected?

My understanding is that this wiretap was not done by or at the direction of the United States Government. We have the testimony from Mr. Patenaude that it was a Quebec Police Force project and not even a RMCP project.

THE COURT: I had hoped that all the evidence would be in, because I may have to write on this and make findings.

MR. PUCCIO: May I have a minute, your Honor?

THE COURT: Yes.

(Pause.)

THE COURT: What is Mr. Sovai's position here?

MR. PUCCIO: Mr. Sovai is the officer from the RMCP, the equivalent of our Federal Police in Canada.

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THE COURT: You say he is coming down with the Bell Telephone man?

MR. PUCCIO: On Tuesday he indicated he would be here with the Bell Telephone representative. He was the man who made the arrangements to have the man come down here without any subpoena or official request.

We are going to notify him that he has to be here today --

THE COURT: Where is he, in Canada now?

MR. PUCCIO: Yes.

THE COURT: There is nothing much we can do if he made arrangements to be here at 3 o'clock.

MR. PUCCIO: The Telephone Company representative was not available until that time. We have no authority to direct the Telephone Company representative to be here at any particular time. They are really doing it as a matter of courtesy and as I indicated before, Mr. Sovai, on Tuesday said that he would be here with the Telephone Company representative.

Now I understand that he told Agent Tobin that he couldn't make it. I do not think he's aware of the fact that he was going to be called. He has been here every day. I had no reason to call

him myself, but I did indicate that he might be called as a defense witness.

I have asked Agent Tobin to call Paris to see if we can have Agent Gallagher here tomorrow morning.

THE COURT: I have motions on for tomorrow. I have a pretty heavy calendar.

Do I have any hearings on for 2 o'clock?

THE CLERK: I know you have one set for 4. I think we have an evidentiary hearing set for 2, but I will check.

THE COURT: All right, let us go over the motions.

MR. PUCCIO: The only other item that we have is the playing of the tape, which will take about an hour.

THE COURT: All right, let us go over these motions.

The first motion is to dismiss the indictment for various reasons. The first reason being the method of selecting the Grand Jury.

MR. IANNUZZI: Did you say you wanted to do the motions?

THE COURT: Yes.

MR. IANNUZZI: All right, sir.

THE COURT: Do you think you are entitled to a hearing to determine whether our plan included 18 to 21 year olds?

MR.IANNUZZI: Yes.

THE COURT: You want a hearing on that?

MR.IANNUZZI: Yes.

THE COURT: Call Mr. Orgel. We will fill up the morning.

MR. PUCCIO: Did your Honor get my affidavit?

THE COURT: I can take judicial notice of what occurred here.

MR. PUCCIO: I have an affidavit that I submitted that covers that.

THE COURT: I have it.

MR. PUCCIO: And it has the amendment to the original plan.

THE COURT: Use of illegally secured and perjured evidence before the Grand Jury.

Did you cite the recent supreme court case that says it does not matter?

MR. PUCCIO: I did not cite it, because I think the affidavit indicates --

THE COURT: Do you want the case?

MR. PUCCIO: I am sure that there are many.

THE COURT: The latest one, just in the last term.

MR. PUCCIO: The defendants, as far as the perjured evidence is concerned, have not made any specific --

THE COURT: Mr. Iannuzzi thinks he doesn't have to prove anything.

MR. PUCCIO: He has the Grand Jury testimony.

THE COURT: He still says so.

It is Colandri, 94 Supreme Court 613.

There is no showing of any use of illegally seized evidence in light of the statement made by the United States Attorney that all the Grand Jury testimony has been turned over --

MR. PUCCIO: All of it has been turned over.

THE COURT: I do not understand the motion at all. You have got too many typewriters in your office, Mr. Iannuzzi.

MR. IANNUZZI: I beg your pardon? I did not understand what you said before that.

THE COURT: Why do you make a motion to dismis on illegally seized evidence, when there is no showing that any was used?

MR. IANNUZZI: The wiretapping was illegal.

THE COURT: Was that before the Grand Jury?

MR. PUCCIO: No, the wiretap was not before

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the Grand Jury. We acquired the wiretaps from the Canadian Government after the indictment.

The reason why I do respond in the affidavit, is because I guess it could be argued that a surveillance of Burkes Drug Store and a surveillance of the Pescatore Restaurant in Montreal, as testified to by Agent Gallagher before the Grand Jury, was as a result of information that came over the wiretaps, so because of that, I guess indirectly, there is Grand Jury testimony --

THE COURT: Motion denied on the ground of the use of illegally secured and perjured evidence.

The next motion -- the next ground is that there is a lack of specificity.

MR. IANNUZZI: May I just have a moment?

I just want to confer with Mr. Klar for a moment.

THE COURT: Yes.

(Pause.)

MR. PUCCIO: I also submitted a short memorandum.

THE COURT: I have it.

MR. PUCCIO: For the record, the Grand Jury minutes were turned over on November 1st, 1974 of Catania, which is Government's exhibit number 3 in

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the items of discovery.

The Grand Jury minutes of Ronald Provencher, is item number 11.

As to Kevin Gallagher, they are 12 and 13.

MR. IANNUZZI: The reason that I wanted to confer with Mr. Klar, Judge, is that there is a problem concerning me. Unfortunately, it is a novel sort of area, and I think perhaps for the record I should, at least, indicate what it is to the Court.

It is my understanding that this witness, Mr. Catania, who did appear before the Grand Jury -- and I bring it up at this time because I think it may be in conjunction with the motion of illegal and improper evidence before the Grand Jury -- it is my understanding that this man, Mr. Catania, was in Mexico. He is a national of Italy or was born in Italy, and then he lived in Buenos Aires and lived in Mexico, and at the time prior -- at a time just prior to his arrest he was arrested in Mexico and on some bases deported.

When he was deported, it is my understanding that his request was to be deported to Italy. He did have residence in Mexico and Buenos Aires as I indicated. For some reason he was deported, over

his request and over his ties, to the United States. At which time immediately in Houston, Texas, he was arrested, and I would like, if your Honor pleases, to suggest to the Court the proposition that Mr. Catania's presence in the United States was the result of collusion between the United States Government --

THE COURT: What does that have to do with you? Suppose it was?

Even under Toscanino --

MR. IANNUZZI: I understand it is different from Toscanino. It may come under the category of collusion between Governments, a subterfuge.

THE COURT: You are now exercising Mr. Catania's rights?

MR. IANNUZZI: No, no, I am just suggesting the illegality of obtaining Mr. Catania, which may inure to the standing of the defendants here against whom he is being used, and also is indicted in the same indictment.

THE COURT: Do you have a case on it?

MR. IANNUZZI: I am just suggesting, because I do not have a case on it, that I think there is something objectionable and unconstitutional in obtaining by collusion the presence of a witness

by coercing him into being a witness.

MR. PUCCIO: Catania is not named in the same indictment as Cotroni.

MR. IANNUZZI ;He was named in another indictment.

MR. PUCCIO: I do not know if I have to respond to the rest. If it is analagous to a search and seizure, there is no standing.

THE COURT: Is that the illegal testimony?

MR. IANNUZZI: If, in fact, and as I say, I am in an area that is somewhat first impression --

THE COURT: Is an area of absurdity.

MR. IANNUZZI: I suggest if every new case was dismissed out of absurdity, we'd have the law of the Plantagenets.

THE COURT: I know, a case five years ago that couldn't possibly be anticipated now becomes the law. Maybe this will be the law in 100 years, but I cannot imagine it in this country.

MR. IANNUZZI: The only way we can do it is by raising the question.

THE COURT: You did raise it and I rejected it. Next.

MR. IANNUZZI: If your Honor pleases, I would like the availability of the communications of the

proceedings or any participation between the United States Government and the Mexican Government in order to effect --

THE COURT: How about the Italian Government, because you said he was a citizen of Italy?

MR. IANNUZZI ; He was not sent there.

THE COURT: Only Mexico and the United States?

MR. IANNUZZI: Mexico was the one who sent him and the United States is the one who engineered it. There was no ties that he had with the United States. He was not born here.

THE COURT: I understand. You want to turn over all diplomatic correspondence, Mr. Puccio?

MR. PUCCIO: No, we do not.

THE COURT: Next question.

MR.IANNUZZI: I think we were on the motion for specificity now.

THE COURT: Yes, we have finally reached that.

How is this too vague -- how is this improperly pleaded?

MR. IANNUZZI: I just want to get a copy of the indictment.

In conjunction with the language of specificity, if your Honor pleases, I have made a reference in my brief to it and the case of

Russell v. United States, et sec, indicated all that we have in this particular case. For instance, in reference to the charges, it is merely the wording and the reading of the statute. I suggest that is not sufficient.

THE COURT: Is this on the wording of the statute alone?

MR. IANNUZZI: Well, if count 2 mostly is the wording of the statute, although they do say that the narcotics is cocaine, but other than that there is no indication at what place, where, to whom and that is a lack of specificity that cannot be cured by a bill of particulars, if your Honor pleases.

THE COURT: Does it give the date, the names of the parties who participated, the acts violating the statute and the amount of cocaine?

MR. IANNUZZI: Doesn't give the acts. It just reads what the statute reads.

THE COURT: You want to know how?

MR. IANNUZZI: I think it is necessary in order to inform a person of the charges he is accused of, not in a bill of particulars, but in the indictment that we have to have a reading of a specific act.

THE COURT: Motion denied.

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MR. IANNUZZI: Is that as to both counts, Judge?

THE COURT: Yes.

MR. IANNUZZI: Very well.

THE COURT: Motion to dismiss the indictment for failure to vote a specific, whatever that means, is denied. I do not know if it is any different than the other one.

MR. IANNUZZI; What that means, so that it will be clear before the Court, that it is necessary for the Grand Jury to indicate that this man should be indicted for a violation of a particular charge, rather than the indictment be drawn, presented to them and then they vote in haec verba, not that a person should be indicted and the United States Attorney goes to his office, draws it and it is signed by the foreman.

There is a grave difference between voting in haec verba and voting for an indictment when the -United States Attorney draws it up. It may not be that which a majority or a quorum of the Grand Jury has, in fact, voted for, and that is why the courts have required that there be avoting in haec verba of the particular indictment.

MR. PUCCIO: Your Honor, I do not believe

Mr. Iannuzzi is right, but in any event, the procedure he described is the procedure used and it is covered in paragraph 6 of my affidavit.

MR. IANNUZZI: May I suggest that we received these affidavits just this morning, although these motions were made some time ago.

THE COURT: Motion denied.

(continued next page.)

THE COURT: The grand jury procedure.

MR. IANNUZZI: If your Honor please, may I suggest that the representation by Mr. Puccio in this affidavit that we received this morning is not sufficient, most respectfully, to clear up the difficulty involved in whether or not the grand jury voted in haec verba.

THE COURT: I will deny it on the ground that you must make some showing before the Government is put to any proof at all. You have made none.

MR. IANNUZZI: Well, the difficulty is in making a showing of what happens in the grand jury is that it is the guarded secret proceeding that the prosecution has, and how could we possibly make a showing --

THE COURT: Going to the next motion --

MR. IANNUZZI: Very well.

THE COURT: -- to dismiss the indictment on the ground of impropriety of grand jury procedure.

MR. PUCCIO: That is also covered in paragraph 6, your Honor.

THE OCURT: I saw it.

And again for the same reason, there is no showing made by you at all that there was any impropriety.

Motion denied.

MR. IANNUZZI: Well, may I suggest the same basis, that is to say that the defendant cannot know what happened in the grand jury without a showing by the District Attorney or the prosecuting attorney as to how in fact the procedure was taken in the grand jury.

THE COURT: If I were to take your theory then in every case before every criminal trial I would have to put the Government on the stand to prove that no rule or statute was violated before I proceed to trial.

MR. IANNUZZI: I don't know that this would be necessary if the United States attorney would adopt a procedure which would be to have in his file a record kept in the ordinary course of business as to exactly how it was done, who was before it, and that the indictment was presented to the grand jury in haec verba. There wouldn't be any problem.

THE COURT: When you become a United States attorney you do it that way.

MR. IANNUZZI: Well, I certainly hope that I don't.

THE COURT: There is nothing in the statute that I know of that requires it.

Next. Motion for bill of particulars:

1. State the exact time when it is claimed that the defendant Frank Cotroni became part of the alleged conspiracy. Are you going to say that?

MR. PUCCIO: As I responded in a memo, we consented to state the approximate time the defendant became a party.

THE COURT: That he became a party to the alleged conspiracy. Isn't that a question for the jury?

MR. PUCCIO: Well, to the extent we know, your Honor.

THE COURT: I would deny it. You can give him anything you want. It is purely voluntary.

MR. PUCCIO: All right, we will.

THE COURT: If you want to describe what you know is the first act that might tend to show it, that's a different situation. When he became a member of the conspiracy -- when he became a member of the conspiracy only Frnak Cotroni knows that. You just know that on a certain day the first time you became aware -- that you became aware -- that he participated in any extent in the conspiracy was at a certain time. That is all you can say.

MR. PUCCIO: Yes, I agree, your Honor.

MR. IANNUZZI: That is the request, Judge,

when they claim it.

MR. PUCCIO: Well, everything is when it is claimed.

THE COURT: Not that he became a member of the conspiracy. When they became aware of an act that might tend to prove that he became a member of the conspiracy. It might be that he just got into a motor vehicle, or spoke to Mr. Dasti, or something like that.

MR. PUCCIO: Your Honor is denying it. We won't supply it.

THE COURT: Denied.

MR. PUCCIO: I would submit anyway, your Honor, it is clear from the minutes and it is clear from the statements of Catania that we have handed over that this information --

THE COURT: When did you become aware that he was active in the cocaine business?

MR. PUCCIO: Well, that's a different thing. I don't know when he was first concerned with the cocaine business.

THE COURT: Well, I think that's what he is asking.

MR. PUCCIO: Well, concerning this --

THE COURT: At the time when it is claimed the

defendant Frank Cotroni became a party to the alleged conspiracy. And the conspiracy is to deal in cocaine.

MR. PUCCIO: This particular case involves one 9-kilogram shipment. And the papers that we have already made available show that the conspiracy started sometime in December 1970. I think the information already given is sufficient.

THE COURT: Next.

Can you give the identity of other persons that were unknown to the grand jury at the time the indictment was returned?

MR. PUCCIO: I think that we can furnish names of people who we believe are co-conspirators, and give some information regarding the whereabouts.

I think again it is clear from the tapes and it is clear from the other papers that we have handed over. The tapes identify other people involved in this transaction that were unknown to us before we received the tapes.

THE COURT: And then it continues, together with the dates when it is claimed that each and every such person became a party to such conspiracy.

MR. PUCCIO: Well, that of course we oppose, your Honor.

MR. IANNUZZI: May I suggest that one of the problems, as Mr. Puccio has pointed out, a great deal of information contained in this tape -- and we have been provided with 22 tapes -- but there are many more tapes still in existence, although not in their original condition, not the original tapes but they are secondary copies of the tapes, and they are not being provided to the defense.

MR. PUCCIO: The defense has everything I have. So we are on equal footing.

MR. IANNUZZI: No. I understand what the Government is saying, but I am suggesting, if your Honor please, that it is unfair to the defendants. There is a process of selectivity that is inherent in this trial where certain evidence is picked by the Canadian Government and now that stands shielded by the Border --

THE COURT: Mr. Iannuzzi, you keep saying how unfair everything is in the preparation of your defense. I know of no case that has ever come before me that has been given such wide and broad pretrial discovery as in this case.

MR. IANNUZZI: May I just suggest that while Mr. Puccio is supplying all that he has on hand, that is a limited amount, which was specifically provided by the Canadian Government in that fashion. And there

are many, many, many other pieces of evidence that are in their possession that they won't give. And I don't know whether they are incriminatory or exculpatory, or perhaps --

THE COURT: Mr. Iannuzzi, I ask you to do one thing, now you have said that on the record. It's on the record. It is clearly on the record. It is repetitious. I know why you are putting it on the record. But it is time consuming.

MR. IANNUZZI: I do not mean to consume time. It is just an answer to Mr. Puccio about the fact that he has given it to us in the tapes. There may be other names in the tapes.

THE COURT: All during this trial, Mr. Iannuzzi, you have been describing how unfair the trial is, and and entire record is unfair because you didn't have an opportunity to prepare. You said it for the record.

MR. IANNUZZI: You never said that, Judge. I have never said I didn't have the opportunity to prepare. I just said -- I indicated many times that I haven't had the material with which to prepare.

THE COURT: You said it just again.

MR. IANNUZZI: Yes sir.

THE COURT: Please don't keep repeating it

during the trial.

MR. IANNUZZI: Very well.

THE COURT: It's very clear on the record. I do not know what number it will be in your points on appeal. But it is very clear that it will be on the appeal.

MR. IANNUZZI: Is your Honor assuming that this case is going against the defendant?

THE COURT: Only in the event of conviction.

MR. IANNUZZI: Oh --

THE COURT: That's right. Otherwise you would not be talking.

MR. IANNUZZI: Well, I don't know in advance. I wish I had precognition, Judge.

THE COURT: Well, 90 percent of the speeches you make wouldn't possibly have been made except anticipating possible appeal.

MR. IANNUZZI: Yes, I have to provide for that.

THE COURT: Once is enough. Twice is assurance. Three times it becomes redundancy.

MR. IANNUZZI: Well, when Mr. Puccio repeats it then I feel I have to at least put it in the record so the point isn't lost.

THE COURT: The first half of 2 is granted with respect to other persons' identities known to

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the grand jury when they return the indictment and any other person whose identity is presently known and was unknown at the time of the return of the indictment, their name, and present address of each such person as called for. That's granted. The balance of 2 is denied.

MR. PUCCIO: Your Honor, I assume that we can provide information concerning their whereabouts. For instance Catania is in protective custody. We are not going to provide his address.

THE COURT: Well, where it is necessary for the safety of any witness then say so. Say you are not providing it because first the safety of the witness requires concealment of his whereabouts, or the Government doesn't know, or on information and belief he resides in a certain area. Whatever you know on information and belief, and whatever you can't reveal.

MR. IANNUZZI: If your Honor please, inasmuch as these motions were made a long while ago and that some letters were sent and were answered a month later, may I know when I may possibly receive this, or at least can I recieve it before the trial?

THE COURT: You should get it this afternoon. I don't know why it should take any time.

MR. PUCCIO: No, it won't take very long.

THE COURT: You say these motions were made some time ago?

MR. IANNUZZI: Oh, yes, Judge.

THE COURT: December 11th.

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MR. IANNUZZI: December 6th, Judge.

THE COURT: Well, they were filed in the Clerk's office December 11th.

MR. IANNUZZI: Well, they were forwarded to the Court and to Mr. Puccio on December 6, Judge. I didn't get an answer until this morning.

THE COURT: Now, 3. Do you understand 3?

MR. PUCCIO: I don't think I understand 3, your Honor, completely. But if it is --

THE COURT: He wants to know, I think, whether these were the people and the only people in the conspiracy, and whether this is all they did and whether they did nothing else. Is that it?

MR. PUCCIO: No, I don't think so.

MR. IANNUZZI: Basically, Judge --

MR. PUCCIO: He wants to know whether it was part of the alleged combination and agreement to do those things and take those actions alleged in the indictment at the time it is alleged this combination commenced.

THE COURT: Suppose you explain it.

MR. IANNUZZI: Yes. For the purposes of making preparations, and when the United States makes its presentation it would be -- it is the desire of the defendants to know whether or not in fact the United

States is going to attempt to prove that the other things other than those acts which are now indicated -- in other words that perhaps the conspiracy started out in one direction and then took a turn, or was subverted. Now, they may introduce evidence in reference to other activities or other intentions. If they intend to do that --

MR. PUCCIO: I didn't understand it that way. My understanding of this request is this, that at the time the conspiracy started was the purpose that is alleged in the indictment the purpose of the conspiracy.

MR. IANNUZZI: Yes, that is --

MR. PUCCIO: If it again is seeking to know whether at the time the conspiracy started, the conspiracy to get involved in narcotics matters -- Yes, it was. Now, if it means something else --

MR. IANNUZZI: That is what it means.

THE COURT: Of course this is separate and apart from the possibility that evidence again might creep in and therefore the defendant will claim that it is not according to the bill of particulars so there would be some other purpose to it. Is that part of it?

MR. IANNUZZI: It is what the Government intends to prove. If they intend to prove several acts or

3 other conspiracy that this was a part of --

MR. PUCCIO: It's a different thing.

THE COURT: I don't know how the Government can prove any other conspiracy.

MR. IANNUZZI: Other parts of the same conspiracy. In other words, if they would intend to prove other things -- in other words, it says whether it was claimed it was a part of the alleged combination, conspiracy, federation or agreement to do those things and take those actions alleged in the indictment. Now, if the answer is in the negative, we want further information. If the answer is in the positive --

THE COURT: How can it be other than affirmative?

MR. PUCCIO: And of course it has to be a part. That's why -- my answer would be yes.

THE COURT: I thought it was --

MR. IANNUZZI: If the answer is yes, we don't have to go further.

MR. PUCCIO: Let me be sure that I understand the request. I thought I understood it. But if this is another way of asking us whether there are going to be other overt acts that we are going to prove --

THE COURT: Is that what you are asking?

MR. PUCCIO: I think that is asked later on. Obviously there must be thousands of overt acts in

this case.

THE COURT: You understand that under 173 and 174 the Government doesn't have to allege any overt acts, and the allegation of overt act is superfluous. I don't know that I will even charge the overt acts alleged. They must prove an overt act but they don't have to allege any. They certainly can prove any overt act other than that alleged. Does your demand there call for any representations of the overt acts?

MR. IANNUZZI: No, what it had to do with is if the conspiracy -- or if a group of people combine or conspire to do something perhaps in the same sphere, and that this particular crime for which they are being charged now is only a part of -- if the Government intends to prove more information, other acts that the people got together that they conspired to do, we want to know what they are --

THE COURT: We are getting into a claim to establish the basis for a charge, as I see it, of a multiple conspiracy that is alleged. I can see some argument of a multiple conspiracy creeping in there in the background.

MR. PUCCIO: I am just looking at the first part of it.

THE COURT: Did you have multiple conspiracy in

mind when you drew this?

MR. IANNUZZI: Well, there was always the possibility of that, or other information as to what these people conspired to do or the Government claimed they conspired to do something else. And this is only the tail end or the arm of it.

MR. PUCCIO: But that is not what the request says. The request says:

"State whether it was claimed it was part of the alleged combination, conspiracy, et ceters, to do these things or to take those actions alleged in the indictment at the this alleged combination commenced."

The time it is alleged the combination commenced is approximately December 1. If your question is on approximately December 1 was it part of the conspiracy to do what is charged, namely, trafficking in narcotics, the answer is yes. Anything more than that, your Honor, I don't read into this thing.

MR. IANNUZZI: Nor do I.

MR. PUCCIO: Well, it just seems to me it is a meaningless request because it is obviously a part if we allege a conspiracy to traffic in narcotics.

The next one asks us to state whether there is one conspiracy. We contend there is one conspiracy of the chain variety actually.

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THE COURT: As to overt act number one, they ask for the intent to prove other acts.

MR. PUCCIO: I state that we will state -- whether we will offer evidence with respect to overt acts other than those enumerated in the indictment. We oppose the rest. The answer is yes, we expect to prove other overt acts.

MR. IANNUZZI: And part of that is the request for details.

MR. PUCCIO: Well, I do not think --

THE COURT: And if those set forth details, actions, names and addresses and places and conversations.

MR. PUCCIO: Well, we object.

THE COURT: Denied.

MR. IANNUZZI: Is that a denial of the entire request or just the second part of it?

THE COURT: Just the second. You already got the first part.

MR. PUCCIO: Yes, he said, yes, he intends to prove other overt acts.

MR. IANNUZZI: Very well, sir.

THE COURT: And then B is denied.

MR. PUCCIO: In B, your Honor, as I read it, he is asking if anybody else was present and participate

7 in any of the overt acts alleged. There are five, and name or names.

THE COURT: I thought that also referred to the others.

MR. PUCCIO: No, he says in any --

MR. IANNUZZI: Any of the overt acts alleged.

MR. PUCCIO: You know, as far as those five -- I believe there are five concerned -- we agreed to furnish the names. I believe I said to the extent known of other people present.

THE COURT: Well, all right, I thought it also referred to -- anticipating that I would grant the second part.

MR. PUCCIO: Oh, well --

THE COURT: -- because then it would be alleged, wouldn't it?

MR. PUCCIO: I assumed what was meant was the acts alleged.

THE COURT: Is that all you are referring to?

MR. IANNUZZI: Except of course if the others were provided then they would be alleged but since they are not then it refers to the ones in the indictment.

THE COURT: All right, granted on consent.

Conversations.

MR. PUCCIO: Well, we will answer whether or not there were conversations, but we object to the remainder of the request. I can answer right now, yes, there were conversations.

Again, your Honor, what took place at these meetings is all clear from the discovery material and from the Grand Jury minutes that were handed over.

THE COURT: C is denied.

D is denied.

E calls for evidence, that is all.

E is denied.

It is a rare occasion when I grant any demand for a bill of particulars that asks for precision, the exact time or the exact place. This is not a bill of particulars in the State Court. The purpose is entirely different.

Do you want to give him any information on two -- on three rather?

MR. IANNUZZI: That would be F, sir?

MR. PUCCIO: We object to D, E, F, G and H in their entirety. They are all requests for similar information.

THE COURT: Denied. E, F, G and H denied.

The next refers to Count Two.

Can you describe what happened on the Government

theory on Count Two? Did someone bring in and deliver?

MR. PUCCIO: Yes, we can give a general description of it, your Honor.

THE COURT: What do you say happened?

MR. PUCCIO: Well, as far as Count Two is concerned which charges concealment, receipt and transportation in the Eastern District of New York, Catania and an individual named Claudia Martinez arrived at Kennedy Airport in New York and traveled by taxicab with nine kilograms of narcotics to Manhattan. That forms the basis of this count.

THE COURT: How do you claim Cotroni and Dasti were involved? Was it because of the conspiracy?

MR. PUCCIO: Yes, they are involved in this count as aiders and abettors, really.

THE COURT: Aiders and abettors?

MR. PUCCIO: Where they are charged. Also, under a Pinkerton theory.

THE COURT: I mean Pinkerton, yes. That it was a crime committed during the term of the conspiracy while Dasti and Cotroni were members of the conspiracy.

MR. PUCCIO: And in furtherance of the conspiracy. It was one of the objects of the conspiracy.

THE COURT: There you have it. As far as you know do you have evidence that they personally handled

it, dealt with it or paid for it?

MR. PUCCIO: In the Eastern District of New York.

THE COURT: That's right.

MR. PUCCIO: That's right. As far as I know the only two -- the only two named defendants -- the only named defendant who was in the Eastern District was Claudio Martinez and Catania, the co-conspirator witness.

THE COURT: So if the defendants dealt with it it was in the Southern District?

MR. PUCCIO: Southern District of New York, Canada, Mexico City.

THE COURT: But you have no evidence of their dealing with it?

MR. PUCCIO: When you say handling the narcotics--

THE COURT: Yes, physically.

MR. PUCCIO: Well, Mr. Oddo actually handled the narcotics as alleged in the indictment. Mr. Citroni never, as far as we know, touched the narcotics, and as far as we know, I would like to check my notes on this point, Mr. Dasti didn't. I believe delivery was made from Catania and Martinez to Mr. Oddo.

THE COURT: All right. Now there is a motion to produce for inspection copy of all books, documents, records and other papers, checks, everything obtained

11 from or belonging to the defendant Frank Cotroni.

MR. PUCCIO: By the way, your Honor, Mr. Klar indicated last week that Mr. Dasti joins in all of these motions.

THE COURT: Yes.

MR. PUCCIO: In some cases it is difficult, as you will see, for him to join in them because it doesn't make any sense if he does.

THE COURT: First Cotroni is asking for all documents that were seized from him.

MR. PUCCIO: Well, we agree to provide any documents seized from him that is in the possession of the United States Government. The same for Mr. Dasti.

THE COURT: Well, what are they?

MR. PUCCIO: I don't believe we have any, your Honor.

THE COURT: That is right, because the ones --

MR. PUCCIO: The one batch of documents that were introduced at the suppression hearing --

THE COURT: He testified were returned.

MR.PUCCIO: No, that was Mr. Baril. He testified that the documents were returned to Dasti. And I think they asked for copies. We will make copies available.

THE COURT: I thought they already had the

copies.

MR. PUCCIO: There are only two, as it appears, relevant documents. I haven't had a chance to Xerox them. But counsel have seen them. I will provide them.

(Continued on next page.)

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THE COURT: So there are none that were seized from Cotroni?

MR. PUCCIO: None that I know of, your Honor.

MR. IANNUZZI: Mr. Puccio, of course, is speaking about the United States Government.

May I request that Mr. Cotroni, having been arrested by the Canadian Government, there is documentation taken from him in connection with this case, and he was arrested based on this indictment, and extradicted on the indictment on the arrest that was made there, that we have the documents that were seized, including his passport, if your Honor please?

THE COURT: Why don't you specify the documents you say are seized so we know what you are talking.

MR. IANNUZZI: Everything that was on his person at the time of his arrest.

THE COURT: And you are the one that is making motions for the Government to be specific.

MR. PUCCIO: Your Honor, I can only --

THE COURT: Do you know of anything, Mr. Puccio?

MR. PUCCIO: I don't. The treaty provides that documents seized from a defendant at the time of his arrest are handed over to us when the defendant is handed over.

In Mr. Cotroni's case nothing was handed over, and I discussed it with Mr. Landry and I don't believe anything was seized.

Now, as far as the other defendant arrested in the extradition matter, Mr. Orsini, there were certain papers that were seized and they have been handed over to us. But I'll check, and if there is anything that we have in our files that belongs to Cotroni, we will make it available.

THE COURT: Do you know of anything specifically that was seized from Mr. Cotroni?

MR. IANNUZZI: One thing specifically that they have is his passport.

THE COURT: His passport?

MR. PUCCIO: I don't have it, but I'll check.

THE COURT: That won't be returned. It will just be submitted for an inspection.

MR. IANNUZZI: That will be satisfactory, or a photocopy of its contents.

MR. PUCCIO: I would assume that since he's in the United States if his passport was taken, we would have it, that is normal procedure, but we don't have it.

THE COURT: Do you know of any documents other than those that Mr. Baril testified to that

were seized from Mr. Dasti?

MR. KLAR: I don't, your Honor.

THE COURT: All right.

B is satisfied, too, except for telephonic conversations.

MR. IANNUZZI: I don't know that B is satisfied, Judge. In reference to if there were conversations overheard, that the Government is going to produce, we would like to have any notes or copies, memoranda in reference to them.--

MR. PUCCIO: Your Honor --

MR. IANNUZZI: -- whether recorded or not.

MR. PUCCIO: -- this request B, and the others that follow, we read very restrictively. They all say relating to the subject matter of the indictment, and that we have given.

THE COURT: I don't know what other possible notes you could have. The evidence indicates that --

MR. PUCCIO: Internal Government documents we object to, as I set forth in the memorandum.

We have given the conversations; any notes that may have been made in connection with the conversations, observations we may have made about the conversations, we would object to turning over.

The conversations themselves are important; our

observations about them --

THE COURT: You mean your analysis of the conversations?

MR. PUCCIO: Our analyses of --

THE COURT: Is that what you want?

MR. IANNUZZI: Unless Mr. Puccio is indicating that there is nothing besides the tapes, no other conversations overheard, after all you can have an agent on the surveillance hear a conversation that is --

MR. PUCCIO: We, of course, consent to give over any statements of Cotroni or statement -- summaries of statements.

THE COURT: Conversations heard during the term of the conspiracy by agents listening or randomly received conversations are not producible.

If the Government wants to produce them, fine. It's not 3500 material.

MR. PUCCIO: Overheard conversations of Cotroni?

THE COURT: That's right.

MR. PUCCIO: It's arguably producible, your Honor, under Rule 16, but we don't have them anyway. In a broad reading of Rule 16, it is producible, but I don't believe we have any.

THE COURT: So that is a statement, they don't

have any. Any conversation between any of the defendants herein and any other defendant herein. Between any of the defendants and any person.

MR. PUCCIO: I don't believe we have any of this, your Honor. other than the tapes which we have handed over, and I've looked through the files that I have in connection with this case and I don't find any -- or anything that could be argued as being somebody described in these requests.

THE COURT: How would a defendant -- how would you be entitled to a conversation had between, for example, Mr. y Bala and Mr. Martinez?

MR. IANNUZZI: Well, if your Honor please, inasmuch as this is an alleged conspiracy and everybody is participating, and if that conversation were to be introduced if they all were defendants here, that conversation could be introduced over objection of counsel as to hearsay, a jury might find that there is a conspiracy, and if so all of the evidence would be introducible against all of the defendants.

THE COURT: Have you read Judge Weinstein's case?

MR. PUCCIO: United States against Weinstein?

THE COURT: Where he directed turning over 3500 material before hand?

6 MR. PUCCIO: Oh, yes. I forgot the name of the case. It was a Strike Force case.

MR. IANNUZZI: I don't know the citation, Judge.

THE COURT: You are entitled to the statements, admissions of your defendant, nobody else is. Suppose the other defendants don't want their statements turned over?

MR. IANNUZZI: If your Honor please, because of the fact that this would be evidence against this defendant in a trial for conspiracy, we are claiming that we would be entitled to it.

THE COURT: And that's your basis, right?

I would deny it on that basis. At any rate, you say that you don't have any statements other than those already turned over?

MR. PUCCIO: Yes. As far as the actual defendants are concerned, we have given them recordings of their voices, we have given them -- as far as Dasti and Cotroni are concerned and Oddo, I don't believe we have any statements that were taken from them by Government agents.

We don't have any overheard of conversations which aren't recorded, but as I point out in the second page on this point, we oppose the motion insofar

as it seeks discovery, inspection, status of property of defendants not party to the motion. Asaf y Bala, Claudio Martinez, these people aren't moving for production of statements, and we oppose the production of anything that they may have said, and if they are called as witnesses we will supply it as 3500 material.

MR. IANNUZZI: When the Government says that it doesn't have, is the Government claiming that these don't exist or that they don't have them but they may be in the possession of the Canadian Government?

MR. PUCCIO: Which are we talking about?

MR. IANNUZZI: B, Conversations of Cotroni, himself.

MR. PUCCIO: I'm only responding to this, your Honor, based on what I have. What another Government has is something not within my possession, custody or control.

MR. IANNUZZI: Does the United States Government know whether or not these exist?

MR. PUCCIO: I don't know of any other statements of Cotroni, but I haven't specifically asked anybody from the Canadian Government. Other than, of course -- I'm sorry, I mean, there are other tapes

that haven't been turned over to me where Cotroni may be talking to Dasti about gambling or racketeering --

THE COURT: Relating to the subject matter of the indictment?

MR. PUCCIO: Relating to the subject matter of the indictment. I have been told by the people from the Quebec Police Force and the RCMP that they have given me everything relating to the subject matter of the indictment. Not the RCMP, the Quebec Police Force, they have given me everything relating to the subject matter of the indictment.

MR. IANNUZZI: Inconnection therewith, Judge, not intending to be repetition, as your Honor has advised me, but there are conversations relative to the activities herein that have not been produced, notwithstanding the fact that they do have something to do --

THE COURT: How do you know that?

MR. IANNUZZI: This has been testified to, that they spoke to each other about one thing or another, but they didn't feel it was particularly significant, they didn't bother producing it. They have given us logs relative to certain conversations between Dasti and Cotroni during the period of --

MR. PUCCIO: They don't relate to the subject matter of the indictment.

MR. IANNUZZI: I suggest, if your Honor please, because of the surreptitious conversations involved and the codes, etc., I don't think anybody is able to tell that without listening to them, particularly defense counsel.

MR. PUCCIO: The request asks for what we claim is related to the subject matter of the indictment.

THE COURT: Next.

MR. IANNUZZI: C, D and E, Judge, have you gotten through them?

THE COURT: D, all statements, replies to questionnaires or other information supplied to the United States Attorney -- it all relates to the subject matter of the indictment.

MR.PUCCIO: It also says,"or any other statements or replies to questionnaires of any other person relating to the subject matter of the indictment." We oppose that. We are consenting to give -- we are only consenting to give, your Honor, written or recorded statements or confessions made by Dasti or Cotroni or copies thereof within the possession, custody, control of the United States Government.

Everything else we oppose in this entire --

THE COURT: Relating to the subject matter of the indictment.

MR. PUCCIO: Everything else we oppose.

THE COURT: But you know of no other, isn't that true, you make that representation?

MR. PUCCIO: Know of any other persons who have been --

THE COURT: No, no other statements, Cotroni's statements relating to the subject matter of the indictment.

MR. PUCCIO: I don't believe there are any other statements.

THE COURT: All right. That's what I say.

MR. PUCCIO: But I haven't -- as far as the U. S. Government is concerned, I have no problem.

THE COURT: Do you know of any statements he made to the Canadian Government concerning the subject matter of this indictment?

MR. PUCCIO: No.

THE COURT: All right.

E: Reports of Surveillance.

Will you represent that there was no bugging or other electronic surveillance of Cotroni or Dasti?

MR. PUCCIO: Well, your Honor, the representation I'm making is outlined in the affidavit, and

11 that's -- well, as far as the affidavit makes the representation as far as Grand Jury testimony is concerned, and that's this, that there is no unlawful surveillance conducted by United States or -- by the United States Government agents or employees.

THE COURT: Was there any surveillance, electronic surveillance?

MR. PUCCIO: Of whom?

THE COURT: Dasti or Cotroni?

MR. PUCCIO: Conducted by us?

THE COURT: By you or, to your knowledge, the Canadian Government.

MR. PUCCIO: Well, your Honor, I would, relying on U.S. v. Toscanino, I would submit that the only relevant surveillance is U. S. Government surveillance or surveillance done by or at the direction of the U. S. Government.

THE COURT: You won't make a representation that to your knowledge there wasn't?

MR. PUCCIO: I will make a representation by affidavit in camera regarding, if your Honor wishes, regarding other Governments involved in this case, but as far as the United STates Government and its agen ts or employees, I can make the representation.

12 MR. IANNUZZI: This isn't restricted just to electronic at this point, I don't think, Judge.

MR. PUCCIO: I do indicate that as far as the United States Government is concerned and its agents and employees, I've asked the Criminal Division in Washington -- I don't indicate that in the affidavit, but I say that I've asked that the files of U.S. agencies be searched and that's what that amounts to.

I have asked the Criminal Division in Washington to give me a response from the eight Federal agencies that we have that could arguably be investigating this type of thing or could arguably be investigating Cotroni or Dasti, and I have asked them to tell me whether there has been any electronic surveillance done by them or at their direction, either directed at Cotroni or Dasti, or whether the files indicate that they have been overheard in connection with the surveillance of other people.

That is only so far as United States Government is concerned. I indicate in the affidavit that I will file another affidavit, once that check has been completed, and I hope they do that next week, of all U.S. Government Agencies.

Now, as far as the foreign governments are concerned, I agree to submit an affidavit in camera.

13 THE COURT: All right.

Except as indicated, the motions are in all respects denied.

MR. IANNUZZI: We have two or three more motions, your Honor.

THE COURT: 3: Rule 16 motion. That's already been decided, hasn't it?

MR. IANNUZZI: I think the next motion is a motion which is entitled, "Motion to be Furnished with All Evidence Favorable to the Accused."

Is that the one that your Honor has before him?

THE COURT: That's 4. What does that mean?

MR. IANNUZZI: Well, I think --

THE COURT: Does that mean opening the file?

MR. IANNUZZI: It's not Brady material, but rather, information that would include but not be limited to evidence that can be used for the purposes of impeaching the credibility of witnesses, statements that would reasonably tend to show that the accused didn't commit the offense, statements which are inconsistent with statements made by parties against the defendant -- by parties other than the defendant, against the defendant. Syl

Inconsistent statements made by declarant to

14 the Government or Canadian law enforcement officers, prior inconsistent statements from those who testified before the Grand Jury.

THE COURT: You want 3500 material. The case is United States v. Percivault, our Second Circuit said you are not entitled to it.

MR. IANNUZZI: Also, any disclosure as to whether or not any of the defendants are expected to testify at the trial of the defendant Cotroni, and if so, what promises or inducements were offered or received by them from the Government.

Also whether any defendants are received any promises or --

THE COURT: You are talking about Catania --

MR. PUCCIO: He's not a defendant.

THE COURT: Doesn't it include witnesses?

(Continued next page.)

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MR. PUCCIO: He says, the government is called upon to disclose whether any defendants --

THE COURT: Defendants I assumed are defendants named in the indictment.

MR. PUCCIO: He's not a defendant in the indictment.

MR. IANNUZZI: It also refers to Grand Jury witnesses, Judge, so if it isn't clear in one area, I would ask that it include witnesses against the defendants.

THE COURT: Are you willing to tell him this or do do you want to wait until the trial?

MR. PUCCIO Well, I'm not willing to disclose the -- all the government's witnesses. It's known that Catania will be a witness, it's known that certain agents will be witnesses. I will respond as far as that --as far as those people now known are concerned.

THE COURT: Do you want to tell him what the government has promised Catania?

MR. PUCCIO: I will do that. I think it's --

THE COURT: It will come out on direct examination, I assume.

MR. PUCCIO: He's also testified at a prior trial.

MR. PUCCIO: Is it all in the transcript of the prior trial?

MR. PUCCIO: I believe it is. That transcript was handed over. In addition, his original indictment was handed over, the superseding information that he pleaded guilty to was handed over, it was explored in the minutes, as your Honor pointed out, of the other trial, and that's all been handed over.

MR. IANNUZZI: May I suggest that I have had the files downstairs checked, there are several files in which Catania was a named defendant and several in which he was -- in several in which he was involved, and some of them, sir, have been ordered out of the Clerk's office and are not in the Clerk's office. Most respectfully, I think one has been ordered out and your Honor has it.

MR. PUCCIO: All of the indictments--

THE COURT: I am not aware of any case in which Catania testified --

MR. PUCCIO: The case Mr. Fried had involving Pramanta and the Tarantos, Catania was a witness.

THE COURT: That may be up -- was there an acquittal there?

MR. PUCCIO: Yes.

MR. IANNUZZI: There was one file missing.

3 I don't have the number offhand.

THE COURT: It may be in the archives. The case is closed, it goes off to the archives.

MR. PUCCIO: In that particular case, the Grand Jury minutes of Catania pertaining to that case have been handed over, and his trial testimony in that case has been handed over. The indictment in that case has been handed over.

MR. IANNUZZI: Is that the Tramanta Taronto case?

MR. PUCCIO: Yes. Catania's affidavit in the Thomaso Bucetta extradition case has been handed over.

THE COURT: I have no file in my chambers.

MR. IANNUZZI: I'm not suggesting that your Honor has it, it's just that it wasn't downstairs and the information that we have is that your Honor had it.

THE COURT: It may be in the archives. I don't know when it goes to the archives --

MR. PUCCIO: I have a copy of that transcript.

THE COURT: I don't know what else you need. Would you like to read files? We have thousands of them down there.

MR. IANNUZZI: Just as they relate to this

indictment, Judge. I have enough cases to --

THE COURT: I don't know that there was anything else in the file except the indictment and transcript. There may have been some motions made. Certainly, that covers Catania.

MR. PUCCIO: Our indictment in Discovery 23 is Catania's original indictment.

MR. IANNUZZI: I have those, Judge.

MR. PUCCIO: Then we have another one, Exhibit 24, which is 73 CR925, which is another indictment in which Catania is named.

THE COURT: Have you got the arrest records of any of the witnesses, including Catania?

MR. PUCCIO: Yes. I've already supplied that information, your Honor. The arrest record of Catania indicates that he has no record, but I put in a letter to defense counsel -- I indicated what we knew about his background.

MR. IANNUZZI: The difficulty with that statement by the United States Government, Judge, is the fact that he was deported from Mexico. He had to be deported for a charge. To say that he has no record and yet have him having been deported from Mexico, and -- for some reason that hasn't been disclosed to us, at this point to be deported to the

Untied States of America at which time he was instantly arrested --

THE COURT: What has your investigator been doing in the meantime?

MR IANNUZZI: I can't get government files, Judge.

THE COURT: You think our government can just call on Mexico and they just comply with these requests, sendyour files over, send your records over and it comes like that?

MR. IANNUZZI: In a situation where I would ask them, or in a situation where the United States Government asks, I would have a tendency to think that they would have a little more influence and a little more cooperation from the government, yes.

THE COURT: You really think so? I find defendants get greater cooperation with some governments than our government gets.

MR. IANNUZZI: I haven't found that, Judge.

THE COURT: No? You have to see the right party, you see.

MR. IANNUZZI: I don't know anything about that sort of thing, Judge.

THE COURT: I learned it here. OUr government has been trying to get records in some cases, and

defendants have them, not our government. We can't get them.

MR. IANNUZZI: In this case, it's just the opposite.

MR. PUCCIO: I do know that Catania was arrested in December 1972 in Mexico, that's his only arrest other than the arrest in the United States. I indicated in my letter --

THE COURT: How did you find that out? Did you get it from the records?

MR. PUCCIO: No. I got that from --

THE COURT: He told you.

MR. PUCCIO: He told me, and also the -- I have a report that was sent to me by a United States agent in Mexico.

MR. IANNUZZI: If your Honor please, the DEA and this, of course, is information supplied by Mr. Puccio, they have had very extensive debriefings, both in Mexico and in the United States, and I would submit that the agents in Mexico must work with the Mexican Government as closely as agents in Canada working with the Canadian Government.

THE COURT: How closely is that?

MR. IANNUZZI: In this case quite closely.

THE COURT: Did your investigator tell you

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that?

MR. IANNUZZI: The Canadian Government has indicated such, that our agents would be in their police office or police headquarters and would be dealing constantly, Mr. Gallagher with Mr. Sovai with the Quebec or the Montreal Police Force, so that that sort of cooperation would lead me to believe that the information in reference to Mr. Catania would be available upon request, particularly when it was known by the United States Government when Mr. Catania was arriving in HOuston upon his deportation to the United States --

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THE COURT: Well, I am not requiring the government to turn that over at this point.

MR. IANNUZZI: Very well.

If the government wants to turn it over, they may.

THE COURT: You seem to know all about it anyway

MR. IANNUZZI: I only know that he was arrested in the United States.

THE COURT: Did you hear Mr. Puccio say that that is all he knows about his arrest record? You know as much as he does.

MR. IANNUZZI: Yes, but I would like to find out certain aspects of how he came to be arrested in the United States and deported to the United States.

MR. PUCCIO: That is a different matter. We do not believe we have to disclose anything like that.

THE COURT: If the question is asked during the trial, I will sustain an objection to it.

I am going to try to keep this trial within the issues. I know it is going to be a tough struggle.

I can see by what has happened during the pretrial period. I tell you this, I will be a lot tougher during the trial than I have been during the pretrial.

MR. IANNUZZI: I do understand the trial will be different than the pretrial. I am not looking to outside of the issues. I just want some information.

THE COURT: I do not know where you'd put it if you got any more.

Inspection of Grand Jury minutes, you already have that.

MR. IANNUZZI: The next motion is a motion for a severance.

THE COURT: How aobut the motion for inspection of Grand Jury minutes? That is seven and then there is eight.

MR. IANNUZZI: I see, I was going on the basis of the motions after notice of motion.

THE COURT: That is what we have been doing.

We will have one on the question of the empanelling of the jury.

Now, as to the names and addresses of witnesses who testified before the Grand Jury, you already have the Grand Jury minutes. You got more than you are entitled to.

MR. IANNUZZI: Is it the representation of the government aht we have all the witnesses?

THE COURT: That is what I heard.

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MR. PUCCIO: Yes.

THE COURT: All the Grand Jury minutes.

An order requiring the United States Attorney, and all their employees to retain all notes, memoranda, recordings and so forth.

You are directed to do that.

MR. PUCCIO: I consented to that.

THE COURT: Any notes or memoranda, do not destroy them from now on. I do not know what has happened before.

MR. PUCCIO: In the original discovery material handed over on November 1, there were handwritten notes of mine before Catania went into the Grand Jury, which I turned over and have retained.

We won't destroy any of the notes.

THE COURT: We are talking about eleven.

Ultimately, all the information concerning any witness on the question of promises, representations, must be made available.

I only wrote on that recently, in United States versus Luchetti.

MR. PUCCIO: We will make that available.

I believe it won't be necessary for us to go into a description of what representations were made

to government agents who are going to testify?

THE COURT: To government agents, no.

MR. PUCCIO: Co-conspirator witnesses.

MR. IANNUZZI: Yes.

THE COURT: Yes.

Well, if an agent was --

MR. PUCCIO: Told that he would get a promotion, if he testified in this case --

THE COURT: We have had claims of that, that he was going to get a Brownie award.

MR. IANNUZZI: I did not think of that.

THE COURT: We will give you some ideas that you did not think of.

MR. IANNUZZI: If that be the case, I do not mind being informed of that.

THE COURT: Any promises that you have gotten, that you will be promoted, tell it to Mr. Iannuzzi, Mr. Puccio.

MR. PUCCIO: I am not going to be a witness.

THE COURT: Tell him anyway. You may be using extra effort because of a promise that you have gotten, if you get a conviction in this case, and the threat of demotion if you lose it.

MR. PUCCIO: I have been given none.

MR. IANNUZZI: You are in the unfortunate position of being at the top, so they cannot do anything.

THE COURT: Sometimes I wonder. They are doing it to us every day.

Twelve is denied -- twelve is granted -- it is denied to the extent -- that is where you asked for statements of other defendants.

Granted except to that extent.

MR. IANNUZZI: Judge, there is a motion for a severance.

THE COURT: Which number is that?

MR. IANNUZZI: It is number five, sir.

I think we skipped to the Bill of Particulars.

THE COURT: On what ground is that?

MR. IANNUZZI: ON the ground that the defendant, Cotroni, would like to have each of the other defendants as necessary witnesses.

THE COURT: That is a motion that is made routinely here.

Everybody suddenly wants everyone else. Of course, they won't testify, right?

MR. IANNUZZI: I cannot presume that, but as an attorney --

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THE COURT: Why don't you ask Mr. Klar, maybe Mr. Dasti is ready to take the stand.

MR. KLAR: Mr. Dasti is not ready to take the stand, your Honor.

THE COURT: How about you, you are moving for a severance because you want Mr. Cotroni to testify?

MR. KLAR: Mr. Dasti indicated that he would like the matter severed as to him on the ground that it seems to be clear that the breadth of the case is directed at Mr. Cotroni -- most of the witnesses testified as to Mr. Cotroni.

THE COURT: Now, if Mr. Dasti is called to the stand, what would you expect him to testify to that would be helpful?

Have you talked it over with him, incidentally?

MR. IANNUZZI: I have discussed it slightly, -- not slightly, I have discussed it with Mr. Klar, and I would suggest, if your Honor pleases, if Mr. Dasti were called to the stand, in a case where Mr. Cotroni would be tried independently, that Mr. Dasti would be able to testify concerning the activities which Mr. Cotroni has been accused of.

However, if they are accused of the same crime --

THE COURT: What would he say?

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MR. IANNUZZI: I would suggest, if your Honor pleases, that I would assume that he would tell the truth.

THE COURT: What would he say, no generalities. Remember the motion you made for specifics?

You are asking for a severance. What would his testimony be?

MR. IANNUZZI: I do not know his exact testimony, but it would be to the effect that he did not commit these acts.

THE COURT: What would he say as to each event, as to each conversation?

MR. IANNUZZI: The conversation had nothing to do with narcotics, that he did not participate --

THE COURT: Be specific and tell me what you say Mr. Dasti would testify to.

MR. IANNUZZI: I would anticipate that he would testify that he did not wilfully, and knowingly, and unlawfully, combine or conspire or confederate or agree with Mr. Cotroni, or any other person, concerning a violation of Title 21, Section 173, and 174 of the United States Code.

THE COURT: That's all he would say?

MR. IANNUZZI: He would indicate that he did not

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converse with Mr. Cotroni, as far as Mr. Cotroni is concerned, concerning cocaine or any other narcotics, that the conversations were relative to other things.

THE COURT: That they were --

MR. IANNUZZI: Relative to other matters, not related to cocaine.

THE COURT: If the action were severed, and Mr. Cotroni were directed to go to trial first, would Mr. Dasti take the stand and testify?

One day I am going to do it. I am going to sever, and I am going to put the other side on the stand, and if he does not take the stand, I will find the lawyers in contempt of Court.

That is the way I am going to treat these motions. I know they are made in the expectation that they are going to be denied, to preserve another point on appeal.

You tell me if Mr. Dasti is ready to take the stand, and in effect say -- not generally, as Mr. Iannuzzi presents it -- but submit himself to cross examination and go through all the possible areas of examination that the Government would likely touch on?

Will he testify?

MR. KLAR: I have not discussed it at length

with Mr. Dasti.

THE COURT: How much did you discuss it with Mr. Iannuzzi before he made the application?

MR. KLAR: Only very slightly, your HOnor.

As I said, Mr. Dasti joins in the motion for a severance as to himself, on the basis that the evidence to be presented against Mr. Catroni and Mr. Oddo and the others will deny him a fair trial.

THE COURT: Mr. Iannuzzi, suppose I severed and directed that Mr. Dasti go to trial first --

MR. IANNUZZI: Yes.

THE COURT: --would Mr. Cotroni take the stand?

MR. IANNUZZI: No question about it.

THE COURT: And he would say --

MR. IANNUZZI: Mr. Cotroni has no connection with narcotics.

He would testify as to that. He has never had any --

THE COURT: He has pleaded not guilty. I know that.

MR. IANNUZZI: And his record will indicate that.

THE COURT: All right, now, you say he is going to take the stand and waive his Constitutional right, if Mr. Dasti were to proceed first, and Mr. Cotroni

were called as a witness, but he would not take the stand in his own trial?

MR. IANNUZZI: I did not say that Mr. Cotroni won't take the stand. I never said that.

THE COURT: We have no problem as far as Mr. Dasti is concerned.

MR. KLAR: Excuse me?

THE COURT: Mr. Iannuzzi said that Mr. Cotroni will take the stand and say that Mr. Dasti has nothing to do with narcotics.

MR. IZNNUZZI: There are other grounds.

THE COURT: Let us take one ground at a time. If I have somebody cornered, I like to keep them there.

MR. IZNNUZZI: I do not know if that is the proper term.

THE COURT: Mr. Klar, are you saying that if Mr. Cotroni were tried first, and the action was severed -- that Mr. Cotroni were tried first, that Mr. Dasti would waive his Constitutional right and take the witness stand and testify that Mr. Cotroni had nothing to do with narcotics?

MR. KLAR: I didn't say that. I said I did not discuss that recently with Mr. Dasti. If your Honor would like me to discuss that with him now, I will do

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that.

MR. ROSENTHAL: In the meantime, I would like to join in the motion for a severance on other grounds.

THE COURT: Youhave the best reason for a severance, and the chances are that it is going to be granted.

I do not see how we can bring Mr. Oddo up here.

MR. PUCCIO: Unless he recovers over the weekend.

MR. ROSENTHAL: I was hoping sooner or later.

THE COURT: There are many reasons that I would like to see him out of the case, when I have to deal with the problem of telephone calls, and the admission of evidenc,e it is much more difficult with Mr. Oddo in than with Mr. Oddo out.

I started reading the old cases of Nardone and Elkins --

MR. KLAR: As far as Mr. Dasti is concerned, we are not going to make any statement that he will take the stand at any time. We will have to see the nature of the testimony at the trial, and I would not make any blanket commitment for Mr. Dasti to testify at his trial or Mr. Cotroni's trial.

MR. PUCCIO: In that case, I would ask that the

motion be denied.

THE COURT: Denied.

MR. IANNUZZI: There are other aspects.

THE COURT: Put them on the record.

MR. IZNNUZZI: It is on the record, statements by Mr. Dasti would not be introduceable against Cotroni, and the Brutonproblem involved in the eradication or compartmentalization of evidence --

THE COURT: No, you are talking about Bruton. It refers only to post-conspiratorial conversations.

The question on the ability of the jury to reserve in their own minds, conversations to which Cotroni is not a party but might be changed against him in the event he were a member of the conspiracy, is another question, and juries are remarkably more efficient, and have a greater capability than many of our Appellate Courts give them credit for.

I have seen it with the care with which they return verdicts, and I do not agree with those statements, and that includes Mr. Justice Jackson, that it is too much to ask of a jury to follow a limiting charge.

What is your third reason?

MR. IANNUZZI: Did you deny that aspect of it?

THE COURT: I deny a severance, period. You could put any of the reasons for the severance on the record.

I say the only one that has a respectable ground for a severance, is Mr. Oddo.

MR. PUCCIO: There are a couple of other requests. One requesting the names of all the Grand Jurors.

THE COURT: Yes, I find no good reason for disclosing the names of trial jurors, even when the question arises as to possible prejudice.

MR. PUCCIO: I spoke to Mr. Lupiano about it, and he said if a request was made to him by the defendant for names of witnesses --

THE COURT: Names of witnesses?

MR. PUCCIO: I am sorry, of Grand Jurors, he would get the approval of the Court first.

That is basically our position. I would ask, however, if the names are given to defense attorneys, that a showing be made before any defense attorney or investigator has a right to interrogate a Grand Juror. I would submit again, this is just a blanket motion. There is no basis for it at all.

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THE COURT: 2:15 for the hearing on the method of selecting our Grand Jury.

MR. ROSENTHAL: May I be excused for part of the time. I have somebody being writted over by the United States Attorney in the Southern District, and he brought him over today, and I am not joining in that motion at this time.

THE COURT: All right.

What possible objection can there be to disclosing the names? One I see is the harassment and the problems that result from jurors feeling that their service is being questioned.

Do you see any other?

MR. PUCCIO: We thought about it, your Honor, and initially we were going to oppose the request, but if per chance defense counsel were here when the Grand Jury were selected, they could have written the names down. There is no right of secrecy that we can find as far as the names of the Grand Jurors are concerned.

THE COURT: I have been quite liberal in permitting lawyers to question trial jurors. I have gone much beyond many of the judges. I know Judge Wyatt in the Southern District says a flat no.

MR. PUCCIO: It's also requested that we

provide the criminal records, if any, of the Grand Jurors. Let's suppose that all the Grand Jurors had criminal records, United States v. Costello, which I believe is still the law, indicates that the bare vote of a Grand Jury is enough and that --

THE COURT: That's what I always thought. I don't know that -- how any one could serve on a Grand Jury if they had a record. They would be disqualified, wouldn't they?

MR. PUCCIO: I would think so. I have had truthful jurors where people admitted to having criminal records.

THE COURT: Misdemeanor. But a felony disqualifies someone from voting.

MR. IANNUZZI: From voting in an election?

THE COURT: Yes. We get our lists from the voting lists.

MR. PUCCIO: Is that permanent disqualification from voting?

THE COURT: Yes. That's one of the things that they want to change, and should be changed, in my opinion, but it's there. We will have that hearing at 2:15.

Nothing else remains except the testimony

of these two agents --

MR. PUCCIO: Gallagher and Sovai, the telephone company representative and the tapes, if your Honor wants to hear the tapes --

TEH COURT: I really don't want to hear the tapes. I think I ought to hear them. I'll hear them early enough, you know, during the trial.

MR.PUCCIO: We can have the tapes ready to -- your Honor can hear them now, we can have them ready at 2:15 if you like, after Mr. Orgell testifies.

THE COURT: I don't know whether I'll have the time.

Do you intend to submit a brief on the admissibility of --

MR.PUCCIO: The wiretaps?

THE COURT: Yes.

Did Mr. Rosenthal leave yet?

MR. IANNUZZI: Yes, your Honor.

MR.PUCCIO: Your Honor, I believe we will submit a short memorandum on it. Again, our position is that the tapes were -- and I'm sure the testimony of Gallagher and Sovai will bear this out, that the tapes were -- are made by another Government.

We didn't direct the tapes be made. They were supplied to us.

THE COURT: Let's assume you can establish all that, the next question is on admissibility, if there was a violation of some law in Canada, that they would be admissible here.

Another question I find that is difficult for me is the definitiion of wire communications. I am trying to read the legislative history now. The reference that Judge Mansfield makes really --

MR. PUCCIO: In Toscanino?

THE COURT: Yes.

MR. PUCCIO: Your Honor, our position would be that as far as we are concerned, the Canadian officials and Canadian officers who conducted this surveillance are private citizens.

Even if -- if a private citizen were to conduct a wiretap of a defendant in the Eastern District of New York, not at our direction or under our control and then came into our office and put the wiretap on the table and said, "Here's evidence against someone." there is a Supreme Court case involving -- I don't have the cite, but I'll get it, involving a private investigator who broke into a room. He was not acting as a Government official --

THE COURT: That is an old case.

MR. IANNUZZI: The law says now that no person

can surveil electronic communications without complying with Title 3.

I suggest that it is the defense contention that Judge Mansfield's remarks in Toscanino that Title 3 was intended to refer only to communications over our (United States nation's) telecommunication network, without other definition.

And persons are referred to, not citizens, and therefore, I suggest, if your Honor please, that these conversations could not possibly have been held other than by using our telecommunication network.

MR.PUCCIO: I will look at Title 3 again, your Honor, but it is our position that if we are not involved in it --

THE COURT: No, but don't you see, the argument is that you are involved if our lines are used.

MR. PUCCIO: Is the United States --

THE COURT: Because when somebody makes a telephone call into the United States, our lines are used.

MR. IANNUZZI: Yes, sir.

THE COURT: That is the thing.

MR. PUCCIO: The interception was made in Canada.

THE COURT: That's right.

MR. PUCCIO: In addition, your Honor, even if -- In other words, the Bell Telephone Company lines were used, what has that to do with the United States Government or the Bureau of Narcotics, Drug Enforcement Administration, U. S. Attorney's Office? I don't see the connection.

The exclusionary rule is supposed to prevent improper --

THE COURT: That is another argument, and that is --

MR. PUCCIO: --improper police conduct.

MR. IANNUZZI: May I suggest, if your Honor please, that the argument to that is, most respectfully, that Mr. McClellan and his entire committee, and the legislature, in enacting Title 3, were very concerned that wiretapping be used only as a tool of last resort, not as an investigative tool and that the privacy of our citizens be protected as much as possible, even to the extent that where telecommunications or surveillance of telecommunications are permitted, that they be done on a minimized basis and so that they were making every attempt to --

THE COURT: That is one view.

MR. IANNUZZI: Yes, sir.

THE COURT: The other view is -- and I've seen

cases that said telephones aren't to be used to commit crime, and that there was a need to detect crimes which used communications, and there was a balance.

They were interested in controlling the way that the wiretaps were used.

MR. IANNUZZI: Yes, sir.

May I just suggest, however the balance was to be struck, whatever regulations were to be imposed were imposed, most respectfully, on the American Telecommunication Network and whether you are on the front end or the back end, the fact is that while they are not supposed to be used for crimes, they are not supposed to be used for surveillance except within the provisions of Title 3.

THE COURT: Do you know that there was a time when the law of this country was that even wiretaps in violation of the Federal law were admissible in the State Court?

MR. IANNUZZI: Yes, sir.

THE COURT: So it wasn't always that the law reached this stage --

MR. IANNUZZI: I understand that,Judge.

THE COURT: I'm going to look at it very carefully, but I am concerned about that phase of it, and

it's the only phase that bothers me, with all the testimony and argument that's gone on here --

MR. PUCCIO: The --

THE COURT: -- I have no problem with that.

MR. PUCCIO: The Canadian officers were intercepting communications over the U. S. network --

THE COURT: That is one.

The other is that it's a United States citizen, and if Oddo is out I don't have to deal with that. He may claim when he spoke and he thought he was talking, of a private conversation, he didn't expect, consistent with our laws, that his telephone wire would be intercepted.

I don't know that it would matter to our courts that a Canadian citizen used part of our wire to have a conversation concerning a matter with which he might not have been able to expect privacy.

MR. PUCCIO: Could it be argued that the Canadian officials in conducting this wire tap would have had to -- before conducting this conducting this wiretap would have had to come to the United States and make an application before a court in order to --

THE COURT: Listen, Judge Mansfield says in that opinion, obviously it wasn't intended to cover

conversations outside the United States, because, as he points out, there is no provision for tapping a foreign wire.

So the answer to your question is, of course that isn't expected.

But that's where the twilight zone is. First, there is a use of our wires, and they talk about maintaining the integrity of our communications, and therefore, any messages that come through our wires is governed by Title 3, and then, the other reference by Judge Mansfield, where he says, obviously our wiretap law didn't intend to require court approval for a foreign wiretap.

But he was talking about a wiretap where none of our wires were used.

MR. IANNUZZI: Yes, sir.

THE COURT: It was allegedly without South American countries.

MR. PUCCIO: I think it's the same thing, your Honor, if someone without Mr. Cotroni's consent picked up an extension phone and listened to the conversation in Canada. I don't think that could be argued to be --

THE COURT: Well, it's a little difficult because we don't have the talk about the possible

violation of Canadian law.

Incidentally, the only violation of Canadian law that I have a real problem with is the divulgence because under Nardone the first case that said you couldn't use wiretap evidence, it was based on the theory that you were committing a crime in the court-room when you divulged -- the divulgence was a crime.

New York State permitted it and they cite Judge Waterman's case where he was in a difficult position, where everyone acknowledged that all the State court taps were violating Federal law and yet the State court judges countenanced it and yet Judge Waterman said he couldn't conceive of any judge violating Federal law.

And yet it was being done. So Nardone finally said, it's inadmissible here, and of course, I think it was Elkins that said, and certainly Mapp -- Mapp was a different violation, said, the State courts can't admit wiretaps obtained in violation of Federal law.

The point is that it didn't start that way. Schwarts against Texas in effect said we really have -- there is no concern that if an officer violated Federal law he could be prosecuted under Title 18 Section. This was up to 1968 -- Section

665 of the Federal Communications Act of Title 45. It was not a criminal statute. It just said, "Shall not intercept wire communications."

As one of the cases pointed out, no one was ever prosecuted for it, so they said, this isn't the way to discourage illegal wiretaps. The way to do it is bar from admissibility. That's the way it happened. It could have gone the other way. It could have been the Canadian principle, as long as it's the truth or it shows what happened, we are not concerned with the illegality.

If there is illegality then prosecute criminally.

MR. IANNUZZI: That's not the law.

MR. PUCCIO: There are one or two cases that cover this point. The only cases on wiretapping up in Canada indicate that it's legal and it's admissible today.

The other cases, I would submit, or testimony of the defense experts is just not on point. It's their own impressions. The judges who have decided this matter have found that it's legal.

THE COURT: There we might be able to go back to Schwartz and justify it because in Schwartz the Court held that they State courts could formulate their own rules of evidence. But that was in the

State Court proceeding.

I don't think any case -- I don't think you'll find any case which held that wiretap evidence is admissible in a Federal court, if it violated Federal law.

At any rate, that's what I'm working on. I paid little attention to all that's going in the courtroom, I have been working on it in my chambers.

MR. KLAR: Your Honor mentions that you would have no problem with the question of wiretaps if Mr. Oddo was severed. However, I would raise this point with respect to direct phone conversations with Mr. Dasti and Mr. Oddo that a good many of those conversations were initiated by Mr. Oddo in New York over United States wires, and Mr. Dasti would have standing as a private party with Mr. Oddo to raise the same issue.

THE COURT: I don't think it matters. At any rate, those are the problems. I have no case on it.

MR. IANNUZZI: May I suggest -- I'm sorry, sir, I didn't mean to interrupt you.

THE COURT: Those are matters I'm interested in. I have been listening to an awfully lot of testimony on the mechanism and the physics of converting sound to electric impulses and, this may

not be the voice because it goes through different mechanisms and how it loses efficiency --

MR. IANNUZZI: That was a result of Mr. Justice Grant in Canada who indicated that interception wasn't interception. He wanted to have an actual interference of property.

THE COURT: I can tell you this: In none of these cases is it strictly a violation of wiretap law.

Under 665 it was a violation of a wiretap law. All the other cases are violations of a specific statute that tended to preserve the equipment, don't destroy our equipment --

MR. IANNUZZI: That's right.

THE COURT: -- don't molest the wires.

And there was one, I think it was Canadian law that prohibited the divulgence of any wiretap conversation. That comes close to the wiretap law.

MR. IANNUZZI: Actually, the Canadian law has both, the interference with the property and the service, and then there is the offer of the divulgence and the interception. The felony is the interception.

THE COURT: I don't think you can cite as authority our barring from admissibility evidence obtained in violation of a wiretap law, because that

was designed to discourage wiretapping.

Those sections of Canadian law that really were violations of statutes pertaining to destruction of property.

MR. IANNUZZI: May I just most respectfully suggest that in one of the areas that I have had difficulty with, in conjunction with this, is will the United Stated countenance illegal evidence despite the fact that the foreign Government does, because, particularly in a case of this sort, if these tapes were taken here they could not be used, and taken there, perhaps, they mightn't be used, but in the analogous position of having been taken there and used here in our court, will our court accept evidence that we ourselves wouldn't accept?

It comes down to the fact that there are very few cases on the subject. We are getting closer to it, but will our courts countenance what we consider illegal evidence to be used ever in our courts?

THE COURT: I don't know. But that's what the breif should be on. 2:15.

(Luncheon recess taken.)

1 AFTERNOON SESSION

MR. PUCCIO: Your Honor mentioned this morning that it would be an easier question if Oddo were severed and I am not too sure if your Honor based that upon the fact that he is an American citizen, rather than on the fact that he was in New York allegedly when certain calls were made.

THE COURT: It was really because he was in New York and it wouldn't be offered against him. There is some authority for the proposition that you cannot object to the admissibility of the wiretaps because it violates someone else's principle regarding admissibility of evidence where violations of constitutional rights are involved.

MR. PUCCIO: There is at least one conversation with Mr. Dasti in New York City and he places a call to Cotroni in Canada, so you do not have a situation where Cotroni and Dasti are always calling each other from Canada to Mexico.

THE COURT: It is protecting the privacy of the person's conversation and protecting what we call the integrity of our telephone lines, the portion that is in the United States.

MR. PUCCIO: Our position is that the interception was done in Canada and it is not done in the

United States and the Canadians would not have had to comply with the United States wiretap statute.

THE COURT: I know that is, but I think you will agree that there is no case either way.

MR. PUCCIO: With the exception of Toscanino, there are no cases on file in surveillance, and Toscanino is a case that involved United States agents.

THE COURT: But it does not have this problem. The telephone calls, if made at all, were made in South America. They did not use American lines. That is the point.

MR. IANNUZZI: If your Honor pleases --

MR. PUCCIO: Toscanino was never developed to the point where that became an issue.

THE COURT: Let us have the other question resolved first, as to the composition of the October 1973 Grand Jury.

L O U I S O R G E L , having been first duly sworn by the Clerk of the Court, testified as follows:

THE CLERK: State your full name.

THE WITNESS: Louis Orgel, O-r-g-e-l.

THE COURT: Do you want to examine, Mr. Iannuzzi? The rule generally is that you first have to make a showing. You said nothing in your papers. Here is the Clerk and he has all the information for you.

MR. IANNUZZI: Thank you, sir.

DIRECT EXAMINATION

BY MR. IANNUZZI:

Q Mr. Orgel, you are the Clerk of the Court; is that correct?

A I am.

Q And docket number 73 Criminal 898, do you know what Grand Jury it was that returned that indictment?

A You mean the Grand Jury for October 19 --

Q No, the Grand Jury that returned Indictment 73 Criminal 898.

A Yes.

Q What was that?

A The October 1973 jury.

Q Do you have a copy of the original indictment, sir?

A No, I do not.

MR. IANNUZZI: Mr. Puccio?

MR. PUCCIO: No, I do not.

THE COURT: I happen to have it.

MR. PUCCIO: The original or a copy?

MR. IANNUZZI: The original.

MR. PUCCIO: The original the Court has.

Q Do you have it now before you, sir?

A I do.

Q Can you tell from the document itself what Grand Jury returned it?

THE COURT: If I may suggest, Mr. Orgel, that you look at the names of the members of the jury and see if the Foreman signed that indictment?

THE WITNESS: What was the question?

Q The question was, sir, is there something upon that document that would indicate to you which Grand Jury it was that returned it?

A Yes.

Q What is that?

A The signature of the Foreman.

Q What would that signature be?

A Alexander E. Erdman.

Q And Mr. Erdman was the Foreman of what Grand Jury, sir?

A The Grand Jury that returned this indictment.

Q Yes, I know. What designation did that Grand Jury have?

A October 1973 Grand Jury.

Q Was Mr. Erdman the Foreman of any other Grand Jury?

A I do not know.

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Q In other words, when was -- let me ask you this: When was the Grand Jury in October 1973 empaneled?

A I believe it was empaneled on October 9, 1973.

Q The Grand Jury empaneled that day?

A That's my belief.

I base that belief on the file stamp on the original indictment.

Q I did not ask my question properly.

The question is: When did the Grand Jury -- when was the Grand Jury constituted? When did it begin sitting as a Grand Jury, on that date?

A I don't know.

Q You do not know?

A I do not know.

Q What is the method by which Grand Juries are selected in the Eastern District?

A They are selected as a petit jury is selected, by random selection.

Q What are the criteria that you use, particularly as it has been supplemented to include persons between the ages of 18 and 21?

A The criteria of those specified in the statute and in the jury plan -- both the statute and the jury plan provide for the selection of persons over the age of 18.

Q And when was it that the Eastern District amended its previous plan to include persons under the age of 21?

A It was very shortly after the statute was enacted.

Q The statute was enacted in 1968?

A That was the original statute.

Q Yes, when was your plan changed?

THE COURT: I will take judicial notice that the amendment including persons under the age of 21 and over the age of 18 were signed by order of this Court dated April 26, 1972.

I show it to the witness, it is attached to the papers.

MR. IANNUZZI: Yes, I have it right in front of me.

Q When was that plan implemented, sir?

A The plan was implemented in 1973, early in 1973.

Q Do you have anything that indicates when it was that persons under the age of 21 and over the age of 18 were included in your lists?

A I do not understand the question.

Q The question is, do you have some way of knowing when it was that persons over the age of 18 and under the age of 21 were added to the list of possible Grand Jurors?

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A In the spring of 1973.

Q Yes, I know. Do you have something that indicates when this was done for the first time?

A No.

Q Do you have the list on which the original Grand Jurors under the age of 21 were added?

A Yes, we do.

Q Where are they, please?

A In the Clerk's Office on tape.

Q Do you know what month it was that the names were first added?

A No.

Q Do you know how many persons under the age of 21 and over the age of 18 were included on the panel -- withdrawn.

Let me ask you this: When the Grand Jurors are selected, what is the method used for selecting the particular people to sit on a particular jury?

A They are selected from the venire by the jury clerk who puts in the jury box the names of all the members of the jury venire and then they are picked at random from the jury box.

Q When you say the "jury box," you do not mean a jury box where people sit?

A I mean a jury drum.

Q How many names are selected, are there any particular number that you designate for one jury?

A No.

Q Is there --

A The entire venire is put into the jury drum and the jury members -- names of prospective jury members are drawn from that drum.

Q This list of veniremen or perhaps it would be better to call them venire persons, how are their names selected?

A They are selected from the qualified jury wheel by random selection.

Q When you say, "the qualified jury wheel," that would be for petit jurors?

A Qualified jury wheel contained the names of all qualified jurors.

Q And does that qualified jury wheel contain the names of persons over the age of 18 and under the age of 21?

A I believe it does.

Q When you say you believe it does, do you know of your own knowledge whether it does or does not?

A Yes.

Q And what is it that you base your opinion on?

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A It is based on someof the questionnaires that we got that were filled out by the persons who constituted this Grand Jury.

Q I am talking about the qualified jury wheel, those are not just qualified Grand Jurors, they are also qualified petit jurors?

A Yes.

Q How do you make a determination as to the people who are qualified, do you send out and they send in questionnaires?

A Yes.

Q Have you made a specific effort to send out to persons who are under 21 years of age?

A No, sir.

Q After the plan was implemented -- not after the plan was implemented, after the plan was signed in 1972 --

THE COURT: Mr. Orgel is troubled by your question as to specific effort. They are treated no different, no better than any other voter.

Maybe you ought to start at the beginning where we get our voter lists and how it is all computerized. Let us get it over with. Start from the beginning, Mr. Orgel.

THE WITNESS: We get the voter registration

lists for all the counties in the district. Those are then turned over to the computer. We then select a starting number --

THE COURT: About how many names were in the list -- the master wheel as of October of 1973?

THE WITNESS: Approximately 3,200,000 persons were registered to vote. Out of that number we got a master jury wheel of approximately 191,000.

Q How is the selection made of the three million down to 191? What is the process of selectivity?

A The process of selection is to select a starting number at random and then select every name at an interval. In our case it is 100, so every hundred names after a starting name is picked at random goes into the master jury wheel.

Q Without regard to race, creed, color, et cetera?

A Without regard to anything whatever. Any name on there is subject to selection.

Q Very well. After that you have your 191,000 names. This is called your master jury list?

A That's our master jury wheel. Then we send a questionnaire to every person whose name appears on that list.

Q Yes.

A Then on the basis of that questionnaire the persons who are qualified go into the master jury wheel.

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Then when we need jurors for a particular case -- first we select the venire. That also was done by random selection.

Q Let me ask you this before you go on to that:

When you indicated that you send out questionnaires and then it is determined who are qualified, what is the basis of the qualification that you would look for?

A The qualifications are set forth in the statute and in the jury plan.

Q Including anyone -- in other words, people would be selected on the basis of their age, under 21 and over 18? They would not be disqualified over 18?

A No.

Q And as long as they had the other proper qualifications, the age of 18 or over, they would be satisfactory and in compliance with the statute; is that correct?

A Yes.

Q In connection with -- I am sorry -- I will withdraw that.

Would you proceed, sir, with reference to your veiremen.

A They are then sent a jury summons and then they come into the courthouse and the names of each of those persons that constitutes the venire are put into a jury drum and then as a request is made by a particular judge or for a

particular case, a number of effective jurors is drawn. That constitutes the jury panel which is then sent to the courtroom.

Q Is it your testimony, so I might understand it clearly, that the persons who are determined to be qualified after filling out the questionnaire would be the venire?

A No, they are the qualified jury wheel and out of that qualified jury wheel, by computerized random selection, a particular venire is chosen.

Q How many of the wheel -- withdrawn.

How many do you select for your venire?

A That varies depending on the number of jurors that we estimate will be needed.

Q It varies from month to month, et cetera?

A It varies from month to month.

Q Is it your testimony that 191,000 are the number available to be called upon, but you select your venire depending upon the necessity for jurors?

A No.

Q Well then, would you explain how you get down, after you have your 191 and they get the questionnaire and send it in and they are added to the list?

A Those qualified are added to our list and constitute the qualified jury wheel.

Q Now, from the qualified jury wheel -- How many are in the qualified jury wheel?

A Approximately 80,000.

Q Of the 80,000, there is a random selection from time to time as needed; is that correct?

A Yes, sir.

(Continued on next page.)

MR. IANNUZZI: Is the Grand Jury picked in the same fashion as a petite jury?

A Precisely the same.

Q When it comes time each month for a Grand Jury, as opposed to a petite jury, a random selection of X number are called upon to appear and -- well, let me ask you to explain how the Grand Jury is selected.

A The Grand Jury is selected in precisely the same manner as a petite jury. The venirmen come into the clerk's office and if there is a request for a petite jury, the petite jury is drawn from the jury drum. If a Grand Jury is required, the Grand Jury is selected in the same way, out of the same drum.

Q Now, the drum that selected the October, 1973 Grand Jury, did that contain the names and addresses of persons who were under the age of 21?

A Yes.

Q And do you have a list of those persons?

A No.

Q Do you have a list of the jury panel -- not the jury panel, but the venirmen for that particular period of time?

A Yes.

Q And on that venire, are there persons under

the age of 21?

A Yes.

Q Do you have their names and addresses and any other information concerning them?

A I have the name and address of one of those. I do not know the names and addresses of all of them.

Q Of the venire, there was one person under the age of 21 or is that the only name that you have?

A That is the only one I have.

Q Do you know if there were other persons under the age of 21 in that venire?

A No.

Q How is it that you know the name of one person under the age of 21?

A I was asked to get out the questionaire of as many people as we could in a short time who were members of this Grand Jury.

Q How many members did you pick out?

A 8.

THE COURT: Are those members of the October, 1973 Grand Jury?

THE WITNESS: Yes.

Q There is one person under the age of 21 in those 8?

A That's right.

Q Is it your testimony -- withdrawn.

In your venire for that particular period, from which the October, 1973 Grand Jury was picked, do you know how many persons under the age of 21 were in that venire?

A No.

Q Is there any way of knowing?

A Yes.

Q At the moment, you do not have that information?

A No.

Q You do not know how many people there were under the age of 21?

A No.

Q When was the first time that the persons who were under the age of 21 were added to the master list that you sent questionaires to?

A In the spring of 1973.

Q Do you know exactly when?

A No.

Q In other words, at that time there were X thousands of qualified voters over the age of 21, how was it that the additional names were added? Was there a special mailing of questionaires at that time?

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A No, we reconstituted the entire master jury wheel and qualified jury wheel on the bases of the voter registration list of voters who had voted in the 1972 election -- 1972 presidential election.

THE COURT: When you said "reconstituted", did you discard your entire master wheel and start a new one?

THE WITNESS: We discarded the entire master wheel and started afresh.

Q This was at what period?

A In the spring of 1973.

Q And when were the questionaires sent out to that group?

A In the spring of 1973.

Q You know what date? Is there a date on the letter that you forwarded?

A There are 191,000 questionaires that we mailed that spring.

Q Do you have one available with a date on it?

A Here's one that was returned in April of 1973 --April 23, 1973; April 26, 1973; April 12, 1973; April 10, 1973; April 11, 1973; April 10, 1973; April 24, 1973; April 29, 1973.

Q When you are reading those dates, do they indicate the fact that the jury wheel was the newly

constituted one that these had been sent to or were these ones that you send ordinarily to qualified voters?

How do you differentiate that particular questionaire from questionaires that were sent out before?

A I don't understand your question.

THE COURT: How often do you send these?

THE WITNESS: We send them out when we reconstituted the whell. We developed a master jury wheel by sending questionaires to everybody in the master jury wheel.

THE COURT: Do you send these out every time you reconstitute the jury wheel?

THE WITNESS: Every four years.

THE COURT: You know when you got a questionaire back in April of 1973, that it was not a questionaire that you had sent back in 1969?

THE WITNESS: Right.

Q And this selection that you say came back in 1973, the questionaires that came back in 1973, were on the basis of the jury wheel picked to include persons under the age of 21?

A Yes.

Q And do you know at the time that the October 1973 jury was picked -- I do not know if I asked

this -- how many people under the age of 21 were on the venire at the time?

A You asked that question before. My answer was I don't know.

Q Do you know how many people under the age of 21 are now on there?

A No.

Q Do you know what percentage that they constitute?

A No.

Q Do you know if there are any records of that?

A No.

Q Is there any record kept as to the male-female breakdown of the venire?

A No.

Q Is there any breakdown kept of the race of the individuals on the venire?

A No.

THE COURT: Is there any objection to giving Mr. Iannuzzi the 191,000 so he can look at them himself?

THE WITNESS: No.

THE COURT: You are welcome to go down to the Clerk's office and look at the 191,000 and

make your own tabulations.

MR. IANNUZZI: I suggest, if your Honor pleases, that that is very kind of you.

However, since there aren't 190,000 on the venire, that wouldn't serve any purpose.

THE COURT: I wonder why you asked the question.

MR. IANNUZZI; I don't have your access to Mr. Orgel, and I do not have the information that obviously you already have.

THE COURT: You do not have the information? Now you have it.

MR. IANNUZZI: The only way I could get it is to ask questions.

THE COURT: If you want a statistical bases for any objection you have to this Grand Jury, you have it now.

MR. IANNUZZI: That is all I wanted, Judge.

THE COURT: Friday and Saturday the clerk's office is open. It is opened until 1 o'clock on Saturday.

MR. IANNUZZI: That is kind of you and I certainly appreciate it.

THE COURT: I am sure that you do.

THE WITNESS: May I say for the record:

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that we are simply concerned with getting a random selection of names on the voter registration list and that is all we are concerned with.

THE COURT: Of the 23 that you are able to check so far from the questionaires, you learned that one of those 23 was a 20 year old?

What is his name?

MR. IANNUZZI: There are only 8.

THE WITNESS: Camille Conte.

Q That is one of the names on their October Grand Jury?

A Yes.

MR. IANNUZZI: Very well.

Q Would there be any objection for all the names and addresses?

THE COURT: Not at all.

MR. IANNUZZI: Of the particular Grand Jury?

THE COURT: Very well, read them off for the record.

THE WITNESS: The names and addresses?

THE COURT: Let's have the breakdown of male and female and white and Negro, any one of the classifications that might be subject to attacks because of racial discrimination or age discrimination.

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THE WITNESS: I have no means of knowing it. I have the names and addresses, that is all.

THE COURT: Age you have?

THE WITNESS: Only on our questionaire.

THE COURT: That is what I am talking about.

THE WITNESS: You mean off the age questionaires that we got?

THE COURT: Yes.

Let the record show the only reason you have 8 is that you did not have time because I made the request around noontime.

THE WITNESS: I got only the names of those that we have in alphabetical order. Most of them are not. We only alphbetize them up till J.

Q In selecting the Grand Jury --

MR. IANNUZZI: Perhaps Mr. Orgel can afterwards ascertain the entire panel and that information can be added to the record as opposed to right now.

THE COURT: Can you find out the other 15?

THE WITNESS: It will be difficult. I duly stated that we have succeeded in alphabetizing them only from A to J. All the others are simply listed by letter and not alphabetized. We have them in file folders, according to letter, but not in strict

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alphabetical order, and that would mean going to thousands of questionaires in order to pick the ones that are concerned with this Grand Jury.

THE COURT: If it is that difficult and that inconvenient, just have the records available for Mr. Iannuzzi, and let him do it.

THE WITNESS: Anytime he wants to come down our records are there.

THE COURT: Let us read the names and addresses

MR. IANNUZZI: Very well.

Since we know the names and addresses, is it that difficult to pick out each and every one? They are under A or B, but not broken down after that? Is that right?

THE WITNESS: You are talking about 191,000 questionaires.

THE COURT: Are you talking about the questionaires or the panel of jurors that you have?

THE WITNESS: I have the wheel cards for this particular Grand Jury.

THE COURT: Read the wheel cards.

THE WITNESS: Alexander E. Erdman, 4370 Kissina Boulevard, Flushing, New York.

Henry Anderson, 250 Cumberland Street,

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Brooklyn, New York.

Paul J. Alleluia, 146-113th Avenue, Flushing, New York.

Raye Berger, 1885 East 29th Street, Brooklyn, New York.

Bertha Bush, 2547 West 2nd Street, Brooklyn, New York.

Charlotte J. Coppolla, 22-08 120th Street, Flushing, New York.

Camille M. Conte, 24 Lisa Drive, Northport, New York.

Claude Hines, 1590 East New York Avenue, Brooklyn, New York.

Andrew King, 463 Fifth Avenue, Brooklyn, New York.

Thomas P. McGovern, 81-20 267th Street, Floral Park, New York.

John Meirs, Mid-Lane, Syosset, New York.

John D. Orsano, 142 Awiaki, Bayshore, New York.

Philip O. Pinbrooke, 84-45 121st Street, Jamaica, New York.

Herman E. Tinado, 26-28 Hoffrey Street, Flushing, New York.

Mary Shepard, 923 Sterling Place, Brooklyn, New York.

James A. Scannell , 195-30 Jamaica Avenue, Jamaica.

MR. IANNUZZI: Is that it, sir?

THE WITNESS: No.

Jacob Spaeth, 13-20, 138th Street, Flushing.

Edward A. Soriano, 138 Hitchcock Avenue, Staten Island.

Martha H. Walsh, 21 Sterling Court, Huntington.

Mary E. Wissel, 87-70 173 Street, Jamaica.

Shelly Winett, 100 Woodruff Avenue, Brooklyn.

Ellen Young, 82-17 165th Street, Jamaica.

Avis M. Zebker, 172 Argyle Road, Stewart Manor, New York.

That completes the list.

(continued next page.)

Q Mr. Orgel, how do you make the determination that these are the people, do you have a specific list on which you have had all their names?

A These are the wheel cards.

Q Yes, I understand.

How do you know that these particular cards were the ones that were representatives of other people who sat on the October '73 Grand Jury?

A We also have a list that is made up by the deputy clerk.

Q May I see that, sir?

A I don't have that here.

Q Would you supply a copy of that?

A Yes.

MR. IANNUZZI: I have no further questions.

MR. PUCCIO: No questions.

THE COURT: You may step down. Thank you.

(Witness excused.)

THE COURT: We will take a short recess.

(Recess.)

MR. PUCCIO: I would ask to amend this affidavit I submitted in one respect. I indicated in the affidavit that in response to Mr. Iannuzzi's motion concerning who was present in the Grand Jury

room, that the witness, the stenographer and myself were present during the taking of the testimony, and only the Grand Jury as far as I know, was present during the deliberations in voting.

In looking over the transcripts, I noticed that Mrs. Libby Clancy was also present during the time -- during the testimony of Catania, as an interpreter, which is provided for in the rules, and I notice that is also indicated on the Grand Jury minutes that I have supplied to the defense counsel, of November 1, so I would ask that the statement be amended to that extent.

THE COURT: It is amended.

You say flatly there were no unauthorized personnel present during the hearings or during the voting?

MR. PUCCIO: Absolutely not.

THE COURT: Are the witnesses here yet from Bell Telephone?

MR. IANNUZZI: No, sir. Supposedly they were picked up at the airport already.

THE COURT: We can use this time to discuss what I consider the only real questions in this case. I will define that by saying I find that the arrest and search of Mr. -- the arrest of

Mr. Dasti was lawful, the search of Mr. Dasti was reasonable.

I find that the documents that were marked as exhibits seized from Mr. Dasti by Mr. Baril are admissible in evidence, subject only to a determination as to relevancy.

But since there was some suggestion made that Mr. Dasti did not have these documents on his person, for reasons of admissibility, I find they were, and of course, that does not preclude the defendant from arguing that they were not. I am just ruling on questions of admissibility.

Aside from that, after all the testimony, the lengthy hearings that we have had, I find the only possible fact questions are, first, of course, the Canadian law, and foreign law is always a fact question.

On interception, the question that was hotly contested, I believe that interception under the statute that talks about interception and divulges, interception means listening in.

The other fact questions I am just going to have to delay resolving until I have read through the transcripts, read through the statutes, to make the determinations on the present state of the

Canadian law. That, of course, involves what divulgence means and whether the insertion of wires is molesting wires, whether diverting the telephone call is molesting wires, interfering with the transmission of a communication.

Those are all questions that I hope to resolve over the weekend.

The real serious question I find is, one, whether Canadian law was violated through the wiretaps. There is no question, one point of agreement here is that whether the wiretaps were lawful or unlawful, the evidence is admissible in Canadian courts.

The defendant has argued that even though it was admissible in Canadian courts, the protection of privacy act barred admissibility of wiretaps that were unlawful, that are offered after June 30, 1974.

Assuming the wiretaps were lawful under Canadian law, the next question is, whether they are barred because of the use of our telephone wires.

That, of course, would refer to any calls made to or from any point in the United States to Canada.

The other question is that whether the

evidence is admissible if illegal under Canadian law, whether we may admit it here because it is admitted in Canadian courts.

Briefly, that is what I think the legal issues are.

MR. IANNUZZI: Sir, may I suggest only in reference to the question of our telecommunication network that conversations between Mexico and Canada also utilize our communication network.

THE COURT: We assume that is so.

MR. IANNUZZI: So that might possibly be a further aspect of our network.

MR. PUCCIO: Your Honor, on the question of admissibility today in Canada of wiretap evidence obtained prior to the Act, there are two cases in Canada --

THE COURT: I haven't lost sight of them.

MR.PUCCIO: Apparently they are the only two cases on that point.

THE COURT: There are cases of original trial court jurisdiction. In the absence of anything else, I suppose I can use that.

I think I recall some cases in this country where our wiretap laws came in, which in effect, I think held, if they were admissible in evidence before,

they are admissible in evidence after our wiretap laws because effective.

You may be able to follow through to find out whether that is sustained -- whether that opinion is sustained.

That is what my belief is.

There was a time when there were wiretaps unlawfully obtained under our wiretap law, but lawful under the existing law, that was admitted into evidence.

That is my recollection.

MR. IANNUZZI: There is that other aspect, however, and I don't know if our statute read the same, that the -- and as your Honor has already noted, that the present law in Canada seems to indicate that only lawful wiretaps can now be admitted, and the question of how that relates back to wiretaps from before, regardless of how they were taken then.

In other words, regardless of the law then, possibly the law might now be interpreted as indicating that they would have to be lawful, and before they did not have to be lawful to be admitted -- now they may have to be.

THE COURT: I think there are some cases

A 1497

that can be cited for statutory construction where the law is subsequently changed, it's never retroactive, that it is procedural.

MR. IANNUZZI: May I suggest in reference to that, I don't know if I suggested it to the Court before, that if it be determined that, in fact, the law in Canada did outlaw wiretapping, in whatever fashion, directly or indirectly, before, and still outlaw it today, that the basic substance of the law has not been changed, it is merely, at this point, procedural, despite what a judge up there might have determined.

It may be that the law there today, as opposed to the law before June 30, 1974, is constant and therefore, that it is not a substantive change, but merely a procedural change, that that being now, it is --

THE COURT: This is a criminal statute, right?

MR, IANNUZZI: Yes, sir.

THE COURT: And you say a criminal statute is just a procedural change?

MR. IANNUZZI: I suggest that the law is the same, the substance of the law, that is to say, the illegality of wiretapping --

THE COURT: Was always illegal but just

formalized?

MR. IANNUZZI ; That's what I am saying.

If your Honor would find that the law before indicated that wiretapping was illegal --

THE COURT: I can't find any violation of any wiretap law except the statutory law that has been cited to me.

Penal law is statutory, it can't be otherwise.

MR. IANNUZZI: Exactly. What I am suggesting is that the law before -- it may very well be found that the law before outlawed, but would have admitted in any event, though outlawed, and therefore, if it is now outlawed again, still, that the substantive aspect of wiretapping has been constant throughout, say from 1967 to the present, it would be outlawed -- the only difference is the procedure, that the Court will not admit it or will admit it.

So I am saying it is not a substantive change but a procedural change that the Court would not admit the illegal evidence, and therefore, it would not come within the proscription against retroactivity.

MR. PUCCIO: I point also, and we are in

the process of getting the opinion, to -- I forget the judge's name, but the judge who heard the case of Mrs. Dasti against Bernard Couture, or, actually, it was actually Mrs. Dasti against Mr. Patenaude and Mr. LaVallee, which proceeding was actually started after the minutes from our hearing here were exemplified and sent up to Canada.

That judge apparently has written an 18 page opinion which is precisely on whether or not these Vegas taps make out a criminal charge or a criminal violation.

I understand that we may be able to get that opinion tomorrow, but we will have to have it translated.

But Mr. Miranda, a witness for the defendants, indicated that the judge did not find a criminal violation. So even today, you have a judge in Canada not finding that the Vegas project wiretapping was a criminal violation.

Admittedly, it isn't the highest court in Canada, but again, it is the only authority we have and it is on this specific question and taps here.

MR. IANNUZZI: I believe Mr. Miranda indicated the judge found the violation, if it existed, was de minimis, so he may have found that it wasn't such,

but he wouldn't bother the --

THE COURT: There is one way to find out what he said, and that is to wait for the opinion.

Have we gotten any word on the witnesses?

MR. PUCCIO: Your Honor, we still have the tapes to listen to, if we want to do that.

THE COURT: Let's do that.

MR. PUCCIO: It might be easier if your Honor sat down here. We would be playing now, exhibit --

THE COURT: There must be some cases involving other types of illegally -- evidence illegally seized in other jurisdictions, that are offered here, not necessarily wiretaps --

MR. IANNUZZI: We have been looking for it, Judge, really. I haven't been able to find it.

(continued next page.)

court would do. I have tried to harmonize that with the active state doctrine, where if the acts deemed to be lawful in one country, are recognized in another country, based on sovereignty -- that is the Sabbatino case --

(Edward Korman, Assistant U.S. Attorney, is now present.)

MR. KORMAN: By what authority do you have to apply an exclusionary rule where the exclusionary rule is not mandated by the Constitutional laws of the United States or is necessarily --

THE COURT: I have just read Wigmore. Wigmore agrees with you. Wigmore says we should never have excluded any evidence obtained in violation of statute. He said it is too severe.

MR. KORMAN: I don't doubt that where an exclusionary rule may be applied by a United States Court to compel compliance and to deter violation of the laws of the United States, but I don't know any basis for your Honor to apply an exclusionary rule to compel agents of a foreign Government from violating the laws of that foreign Government as they apply in effect to a foreign national, where no agent of the United States has been involved.

THE COURT: I started out that way, but I can

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THE COURT: I started out that way, but I can

find a reason for it if I really tried, and you know the courts have reached far in order to exclude wiretap evidence.

Now, here is the logic then, if you want it. I don't say that you will accept it or that any other court will accept it, but you are talking about extending the reason for the current rule, excluding it because it will discourage or compel adherence to the law.

There is so much in international communication that is very easy to extend the rule as it is to extend the communication by saying, if you permit unlawful wiretapping in international communication, it would make it very easy for anyone to just go over the border and make an international call and wiretap unlawfully.

MR. KORMAN: I don't think that is so. We are not talking about United States agents going across the border. I am willing to concede, and certainly after Toscanino, and as long as that case remains the law, that if a United STates agent crossed the border to wiretap, that would violate the Fourth Amendment according to the Court of Appeals.

THE COURT: But you disagreed with that.

Let's take your point of view.

MR. KORMAN: I could accept that for the purpose of deciding this case and for the purpose of arguing this case I don't have to quarrel with that assumption.

If we were dealing with --

THE COURT: But you find it is convenient to accept it.

MR. KORMAN: It is the law of the Circuit, and I think your Honor is bound by it at this point, so why not accept it?

THE COURT: If it were not for Toscanino, you wouldn't argue that way.

MR. PUCCIO: It is not necessary to disagree with it for the purposes of this case, although we all vehemently disagree with that decision.

MR. IANNUZZI: Except for me.

MR. KORMAN: I am going to accept that. We are not dealing here with an attempt by United States agents to evade the laws of the United States or the Constitution of the United States by crossing an international boundary.

THE COURT: You accept Toscanino because it is the law. Judge Mansfield said -- this was enacted to protect the integrity of our system of

telephonic communications. Remember that? He cites the United States Administrative Code and -- the 90th Congress, was it, Second Session, page 2178?

He says that it is to protect our communications and any -- I think he says, or does he cite the legislative history, and any call that is used through our communications. Isn't a call made from Canada to Mexico, using our wire?

MR. KORMAN: I would suppose literally it would be. But I think there are two factors that have to be considered.

First of all, you are dealing with crossing an international boundary, and it has been acknowledged for a long, long time, that when you attempt to bring goods or other things across an international boundary, not quite the same protections of the Fourth Amendment and the Constitution apply, and so that even if we were dealing with him bringing a package, let's say his diary of all these communications written down, across an international boundary, I would expect that the Canadian Government could claim a right to examine those documents.

THE COURT: I don't think that is the thought conveyed. You cannot use our lines in violation of

our wiretap law.

MR. KORMAN: The wire that was put was put in a wire that was located in Canada, and I think in this regard, that the Congressional findings that are set out in the United States Code after Section 2510 have some pertinence.

Quoting from Section 801 of Public Law 9351, it says, "On the basis of its own investigation of published studies, the Congress makes the following findings:

"Wire communications are normally conducted through the use of facilities which perform a part of an interstate network. The same facilities are used for interstate and intrastate communications."

It then goes on to describe the fact that there has been extensive wiretapping carried on without legal sanctions and without consent of any of the parties to the conversations, and that notes that the contents of these communications and evidence derived therefrom are being used by public and private parties as evidence, etcetera, etcetera.

There is no talk about interstate, intrastate, nothing about international or foreign.

The second paragraph of the findings:

"In order to protect effectively the privacy of these communications, the integrity of court and administrative proceedings, and to prevent the obstruction of interstate commerce, it is necessary to have laws of this kind."

Again, no allusion to foreign commerce and to international communications.

I think the reason for that is, first of all, I think it is debateable even whether Congress would have the authority to have a penal law that would apply extraterritorially to conduct by a foreign citizen in a foreign country with respect to commission of an act which takes place solely in that foreign country and may even, if your Honor's suggestion about the propriety under Canadian law is so, be validly lawful under the law of the State where the act takes place.

THE COURT: That was the argument made by one of the lawyers and I said no, I don't think the argument is based on the lack of authority to give extraterritorial effect to our penal law, but rather on the violation committed within our borders.

The argument is that as soon as that electrical impulse crosses our border and uses our

wires, it is now within our jurisdiction and for us to control.

MR. KORMAN: Yes. And nothing has taken place within our jurisdiction, that is, no wire within the Constitutional boundary of the United States has been interfered with or upset.

THE COURT: I am not talking about Constitutional boundary, I am talking about geographical boundary and statute.

MR. KORMAN: Suppose we were dealing with a civil lawsuit brought for invasion of privacy and the issue came down to what the law will assume the conduct was lawful in Canada and unlawful in New York, and it came down to what law would we apply if this was a civil case.

As far as I know, even under the most advanced reasoning, even the law of the place of the tort applies, that was the original rule, you apply the law where the act took place.

It seems pretty clear that even where a person is acting in accordance with the law of the place where he is acting, and where he has acted, that action would not be unlawful, then he could not, in another jurisdiction, be held to --

THE COURT: The analogy may be closer to the

case where someone shoots a bullet across the border, the shot is fired in Canada and the person is killed in the United States.

MR. KORMAN: Here nothing was shot across the border.

THE COURT: The electrical impulse is going across the wire.

MR. KORMAN: At the time it is received, it is in Canada.

MR. IANNUZZI: We have a restrictive statute that says -- does it say that any time that there is an impulse on our network it has to be regulated according to our law?

THE COURT: Are you going to argue this in the Court of Appeals one day, Mr. Korman?

MR. KORMAN: I would think so.

THE COURT: Do you intend to argue this in the Court of Appeals?

MR.IANNUZZI; If necessary, sir.

THE COURT: All right. I know who the combatants are. It can get into a hypertechnical, supercilious atmosphere after a while.

MR. KORMAN: Another factor, by the way, that Judge Mansfield mentioned in determining the scope of the wiretap statute, was that proscribing

the procedures to be followed in obtaining a wiretap authorization --

THE COURT: Excuse me --

MR. KORMAN: It notes that the statute significantly makes no provision for obtaining authorization for a wiretap in a foreign country.

I would doubt that you would issue a search warrant to a Canadian official who came here and said he wanted to undertake the activity of --

(continued next page.)

r/td

THE COURT: I quoted that very phrase this morning. That's right.

MR. KORMAN: One to take the activity here.

THE COURT: In interpreting every one of these cases, not only Toscanino, but every case as you and I know, you have to clearly understand the issues that are presented.

Judge Mansfield was dealing with phone calls made in a foreign country.

MR. KORMAN: He doens't know what he was dealing with.

THE COURT: You are on the record.

MR. PUCCIO: That's right.

MR. KORMAN: Never any disclosure as --

MR. PUCCIO: We never got to it.

MR. KORMAN: Were or weren't any wiretaps. As a matter of fact, there was a denial.

THE COURT: An allegation, I know. He assumed the truth of it.

MR. KORMAN: But it was an allegation that Toscanino's phone was being tapped.

There is no indication of where he was making telephone calls to.

THE COURT: I thought that in Perine against

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William Norton, decided just a few days ago, December 20th, Judge Mansfield quotes Judge Hand, Learned Hand on statutory interpretation.

> "There is no surer guide in the interpretation of a statute than its purpose when that is sufficiently disclosed, nor any surer mark of oversolicitude for the letter than to wince at carrying out that purpose because the words used do not formerly quite match with it.'

So you can look at the letter of the statute, like the definition of communication and it may distort the interpretation and the purpose of the statute.

The whole theory of admitting into evidence, illegally seized evidence is undergoing a re-examination I know.

All the run of the cases I read said the reason for it is that the prosecution -- no one was ever prosecuted for violating the law, so they felt this was the only way to attain it, saying it won't be used in evidence.

Now, the question is what is gained and what is lost after that experience.

MR. KORMAN: I think, Judge, in terms of this

particular wiretap statute, and the exclusionary rule, I think it has to be remembered that it followed the Supreme Court's decision in Burger versus New York, which suggested that a wiretap statute could be enacted, which -- containing certain procedural protections would not violate the Fourth Amendment, and Congress proceeded promptly to enact such a statute and to include an exclusionary rule, which is designed to compel compliance with the Constitution and with the additional protections that the statute --

THE COURT: The exclusionary rule for wiretap is first suggested in Olmstead.

MR. KORMAN: It would be -- if in fact, the Fourth Amendment -- if in fact, the wiretapping violates the Fourth Amendment, then presumably --

THE COURT: No. Olmstead said --

MR. KORMAN: It didnt.

THE COURT: Did not violate.

MR. KORMAN: That's correct.

THE COURT: However it said Congress had the authority to exclude wiretap evidence, and that might be the way to do it.

MR. KORMAN: I don't doubt that.

MR. IANNUZZI: As a matter of fact, if your

A 1514

please, Burger I think did not indicate that a statute could be written, but I think Burger posed the question, we may find out --

THE COURT: Burger and Katz. They actually used the guideline of Katz to write the statute.

MR. IANNUZZI: May not be able to write a statute that will stand Constitutionally.

THE COURT: It has already been declared Constitutional by any number of Courts.

So when you say they cannot write a statute, all I can say is, they did.

MR. IANNUZZI: I just say, that's what Burger posed.

We may find ultimately that we may not be able to have a statute, but in any event, if we do have one, it has to have more stringent guidelines.

MR. KORMAN: In any event, I think the best analysis, and the most recent one of the purpose of the exclusionary rule, is to be found in the United States against Calandro, which sustained the use of illegally seized evidence before a Grand Jury and refused to order that kind of evidence suppressed, and where the Court, speaking through Mr. Justice Powell, brushed aside most of the traditional justifications, other than the rule of

deterrence as being the controlling and sole factor motivating the imposition of that kind of extraordinary sanction.

And also drew attention to the authorities, which indicate that exclusionary rule has a very limited kind of deterrent effect, in any event, and merely said we need not consider in this case, the continued efficacy of the exclusionary rule.

So we are dealing, number one, with a rule that has been severely limited recently, in which the Supreme Court, in a majority opening, has given us some reason to question before extending.

We are dealing with conduct, not by American officials, not directed against American citizens, but conduct of Canadian police, directed principally against the Canadian national, who enjoys no, generally speaking, no rights under the Constitution of the United States or its laws, to be prctected against acts of the agents of the country in which he resides.

I think the Court, in construing the Statute and the Fourth Amendment's exclusionary rule, has a right to ask what deterrent efficacy is excluding this evidence going to have in considering a number of factors, including the very, very serious nature of the offense that we are dealing with here.

THE COURT: I am ready to write that we have no business fashioning a policy that we hope would help the Canadian police adhere to our Statute.

It is none of our business and we should not be concerned with it.

I am not so much troubled by that.

Of course, we are too far down the road, for me to say that the exclusionary rule has had a poor history in supporting its theory.

First of all, the statute itself, says the evidence should be excluded.

It is not the violation of that statute, we are talking about in supplying that theory to Canadian law. Violation of Canadian law should be the reason for excluding it here.

MR. KORMAN: It says it should be excluded if it's obtained unlawfully. Presumably, that brings us right back to what is covered by the Act, rather than Canadian law, and it seems reasonably --

THE COURT: Defendant argues that it is unlawful, if the -- there is no specific authority granting the police the right to --

MR. KORMAN: I think --

MR. IANNUZZI: Under the Canadian laws, as it stands.

THE COURT: Yes.

MR. PUCCIO: Of course, our expert, Mr. Landry, gave the opposite opinion.

MR. KORMAN: In any event, the Supreme Court, as I recall, has defined the term "unlawful" in that section, to include in violation of the Constitution, and also in violation of those provisions of the Act that are designed to limit official conduct in the authorization of these wiretaps under the law.

I don't think that, quite frankly, that Congress ever thought about this problem in writing the Statute. I think the language that I have read, where they have talked about interstate and intrastate communications, indicates and if anything, quite the contrary, because certain provisions they do -- of the Act, they do speak about foreign commerce, mailing certain materials in interstate or foreign commerce.

They speak of this as being violative of the Act.

In talking about the general, over all purpose of the Act and the findings that are included as part of the Statute, they speak solely about interstate and intrastate communications.

THE COURT: You think the absence of any history as to the legislative --

A 1518

MR. KORMAN: I don't think there is an absence. I think the legislative history that's there --

THE COURT: I mean, in telephonic communication?

MR. KORMAN: I was reading from Section 801 of the Wiretap Act, where Congress makes its finding, where they talk about wire communications are normally conducted through the use of facilities, which form part of an interstate network.

The same facilities are used for intrastate -- inter and intrastate communications, and theh they say the contents of these communications, interstate and intrastate communications and evidence derived therefrom are being used by public and private --

THE COURT: Let me ask you this question. Are you saying that if a call were made from here to Canada, and we unlawfully tapped here, that it would not violate the Wiretap Law, because it was an international communication and not an interstate?

MR. KORMAN: No. I think it would violate the law, but we did not tap here. No conduct --

THE COURT: No. If you say that, the law intended to cover only the interstate communications, then you would exclude the international?

MR. KORMAN: No, because the conversation that is going from -here to Canada, is obviously crossing

State lines, but it comes a point when --

THE COURT: Suppose -- doesn't have to cross State lines, compared to Canada.

We have a common border with Canada.

MR. KORMAN: No. I still think that the interception would be covered, because you are dealing with conduct undertaken here by American agents, and I don't have any doubt about that.

THE COURT: Suppose it was Canadian agents. I will try to give you the hypothetical to fit my situation.

MR. KORMAN: I think if Canadian agents came into the United States, they're bound by Canadian law, and they have no more standing to violate the law than any other private official.

Violate United States law than any other person who is within the boundaries of the United States.

When you enter a foreign country, you are bound by its laws.

MR. IANNUZZI: What your Honor indicated a few minutes ago, in that one, could therefore circumvent the law by sending an agent, across the line, which we don't have in this case, to tap, can also be extended one bit further, by being across the

line, and being aware of activity and acquiescing to it being done, knowing that you couldn't do it yourself.

THE COURT: All right.

MR. IANNUZZI: And allowing the Canadian agents to do --

THE COURT: Suppose we suspend on this, and I understand your witnesses are here.

MR. PUCCIO: Yes, we have witnesses.

THE COURT: Let's proceed with that.

You understand the difficulties I have with it.

If Mr. Gallagher or Mr. Sovey, is it?

(Continued on next page.)

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MR. PUCCIO: Your Honor, I spoke to Mr. Gallagher during the luncheon recess and he can't get a plane from Paris today. He is going to try to get one tomorrow morning, because of the time difference and it will put him in New York probably around 3 or 4 o'clock. If not, he already has a reservation which will get him here on Saturday night.

But Mr. Sovai was present in court and as we were breaking up yesterday, and I guess from the colloquy it appeared that there wasn't going to be much to do today and that we only had the telephone representative and he somehow assumed from that that we wouldn't need him today.

We called him when it was discovered this morning that Mr. Iannuzzi did in fact want him today.

MR. IANNUZZI: Which I mentioned on Thursday. I mean, on Tuesday.

MR. PUCCIO: Yes. Not any misunderstanding as far as I was concerned. Just a misunderstanding as far as the witness was concerned.

MR. IANNUZZI: Yes.

MR. PUCCIO: We spoke to him this morning and he tried to get a flight but he was able to get the telephone company representative on a plane but not able to get in himself, but he will be here tomorrow

morning. So we have him coming here tomorrow.

We have Mr. Gallagher possibly tomorrow afternoon. If not, first thing Monday morning.

THE COURT: The trouble is, I must have about 15 or 20 matters on tomorrow. Tomorrow is motion day.

MR. PUCCIO: Mr. Sovai will make himself available, your Honor.

THE COURT: This (indicating) is my calendar for tomorrow.

MR. PUCCIO: Yes. Whenver your Honor wants to hear him. In other words, if you have a few minutes. Again, I have interviewed --

THE COURT: I have from 9:25 until 9:30. That's a few minutes.

MR. PUCCIO: That's all right with me. We can get in touch with him and see if -- Will he be in here by 9:30?

THE COURT: I have a calendar from 9:30 until 4 o'clock.

MR. PUCCIO: 9 o'clock?

MR. IANNUZZI: That doesn't solve the problem.

MR. PUCCIO: You have one from 9 o'clock?

MR. IANNUZZI: That doesn't solve Mr. Gallagher. Might as well do them both on the same day.

MR. PUCCIO: Your Honor, I accept full blame for

3 not having them here. However, I reiterate the fact that this is a fishing expedition. Mr. Patenaude is the head of the Quebec Police Force who has testified and he's completely uncontradicted, that this was his own operation, that he ran the entire thing.

I have interviewed two other people. They had nothing to do with the -- with directing it.

THE COURT: Mr. Puccio, I agree. This is scatter shot.

MR. PUCCIO: There was another --

THE COURT: There are a thousand buckshots coming out of one bullet. They hope to hit something.

It's the old salesman. If you throw enough against the wall, maybe some will stick.

MR. IANNUZZI: No, your Honor. You just have to tie down the record.

THE COURT: I know the record. I can understand the record on a point that is viable, something that makes sense, something that has sense.

MR. IANNUZZI: It made sense in the Toscanino case.

THE COURT: But shooting from envery direction, first of all, from a tactical point of view, I think it -- you lose force in every argument you make. Nothing sounds as if it means anything.

4 Nothing sounds as if it means anything.

MR. PUCCIO: We've already had objections to the Grand Jury panel. We've been told unauthorized people were before the Grand Jury.

THE COURT: Everything.

MR. PUCCIO: We've been told that everything illegally seized. many, many --

THE COURT: I can conceive of what happened. Somebody went through a textbook on motions that can be made and you started from one and took every possible motion that was ever made in any criminal case.

MR. PUCCIO: None of these were supported by affidavits under oath, by the way, your Honor.

THE COURT: Nothing.

MR. IANNUZZI: I think they were.

THE COURT: I will give you the opportunity to make a complete record. We have gone this far. We have wasted this much time.

MR. IANNUZZI: If your Honor please --

THE COURT: We lose sight of the important issues, those that I have discussed.

MR. IANNUZZI: But this issue that we are discussing right now is the very one about -- on which the Toscanino case hinged. I don't know the answer. All I can do is call the witnesses, Judge. I don't vouch for what they're going to say.

THE COURT: Toscanino did not do that. Toscanino said I was drugged, I was beaten, I was kidnapped, American agents did it. They were there. They had the whole plan. They helped in the whole thing. Toscanino said it.

The Government did not have to come in. As a matter of fact, if you read Toscanino carefully, Judge Mansfield even said he does not know whether I should have a hearing unless some showing is made.

MR. PUCCIO: I think the --

THE COURT: Very end of that opinion.

MR. IANNUZZI: Yes.

MR. PUCCIO: Counsel is pointing to the Part II of the Toscanino opinion as well, and if that's what's alluded to, that only requires, as I read it, an affidavit from the United States Attorney indicating that there was no surveillance, unlawful surveillance done by or at the direction of American agents or employees and that you already have. With the promise of another affidavit coming forth.

THE COURT: Mr. Fisher, Toscanino's lawyer spent I don't know how many days and maybe weeks interviewing people down there, trying to get affidavits and proof that it happened.

The Government hasn't yet been required to say

a word about it.

In your case you come through the courtroom doors and say, you did nothing right, now you prove you did everything right.

MR. IANNUZZI: I didn't say that. All I want is an agent to testify as to what he did, and if it's acceptable, credible evidence, that will be satisfactory. I can't take Mr. Puccio's word for it. I don't think it's -- it would be proper.

MR. PUCCIO: By the way, your Honor, Mr. Fisher on the Toscanino -- in the Toscanino case didn't submit an affidavit and didn't do any of that before he made the representation. At this point I think he is attempting to collect affidavits, but that again was an assertion made not under oath and with -- not without --

THE COURT: No, but if you recall --

MR. PUCCIO: There were many more specifics than were here.

THE COURT: Specifics and for the purpose of appeal I said we will assume for these purposes that the allegations are true, and that is what you end up on, so it was in lieu of affidavits.

MR. KLAR: Judge --

THE COURT: Apparently the witnesses aren't here.

7 MR. PUCCIO: The representative from the Telephone Company is here.

THE COURT: All right. Let's take the representative from the Bell Telephone Company.

MR. KLAR: May I ask, as far as the other witnesses are concerned, that any further hearings be held on Monday?

THE COURT: I do not know. I may hold them on Saturday. I do not know.

MR. IANNUZZI: We may not have Gallagher here by then.

THE COURT: I want to make sure that this case starts on the 6th.

MR. IANNUZZI: We have no objection.

MR. KLAR: Have these witnesses first thing Monday and then go into the jury selection so we can --

MR. PUCCIO: They will be witnesses at the trial and, if your Honor wishes -- I am not going to ask them on their direct testimony whether they -- this wiretapping was done by or at their direction, but in the voir dire, out of the presence of a jury during a recess at the trial, they could be queried on these points.

I can't imagine it taking very long, in light of Mr. Patenaude's testimony on that point already, which

A 1528

is completely uncontradicted and very straight-forward.

THE COURT: Mr. Puccio, It will take the morning, at least.

MR. PUCCIO: Mr. Gallagher will try to be here late tomorrow. If he can't be here late tomorrow, the only other flight out of Paris is on Saturday morning, so it will be late Saturday.

THE COURT: I do not want him to come in on the hope that he might be taken, to come in from Paris for that reason.

MR. PUCCIO: He is scheduled to come in because he will be a witness at the trial.

THE COURT: Did he intend coming in Friday?

MR. PUCCIO: The trial is starting Monday so he has reservations to arrive here -- to leave Paris Saturday morning and arrive here Saturday night. He will be here for the entire trial or as long as he is needed, but he will try to get a plane tomorrow morning, but I spoke to him on the phone and he indicated that it's now about -- it's now about 9 o'clock or 10 o'clock in the Paris and there were some problems as far as getting reservations and getting the proper authorization.

THE COURT: All right. We will take the other witnesses Monday at 9:30. Call the gentleman from

the Bell --

MR. PUCCIO: He's not my -- Mr. Trombley, your Honor. It's again defense witness.

(Continued on next page.)

B E R T R A N D T R E M B L A Y, called as a witness, having first been duly sworn by the Clerk of the Court, testified as follows:

DIRECT EXAMINATION

BY MR. IANNUZZI:

THE COURT: Incidently, I don't think I made a formal ruling on dismissal of the indictment because of the composition of the Grand Jury and the need of selecting the Grand Jury. That motion is in all respects denied.

MR. PUCCIO: Thank you, your Honor.

THE COURT: He's your witness, Mr. Iannuzzi.

MR. IANNUZZI: Oh, thank you very much.

Q Is that Mr. Tremblay?

A Tremblay.

Q Tremblay?

A Yes, sir.

Q All right. You are connected with Bell Telephone of Canada?

A I am.

Q And what is your position, sir?

A I am working for headquarters accounting and my function is security representative.

Q And in connection with that, can you testify

as to whether or not there are records in existence relating to repairs -- withdrawn. In connection with a phone -- in connection with a phone at -- in the 677 exchange, particularly 677 927s, that phone -- well, let me start with a different phone. In reference to telephone 488 0339, that phone has a terminal box in the basement of a building at 4635 Clanranald?

A I -- I am not aware of that, sir.

Q Well, assume that that be a fact. Would there be in existence records as to repairs to the particular junction box which houses not only this particular 488 number but various other 488 numbers?

A This is a little difficult to answer positively because our repair work orders are filed by telephone numbers. Now, telephone numbers are irrelevant to the address of where the service is working.

Q Let me ask this. In reference to repair orders and assuming we have a -- a terminal box that handles perhaps 120 lines, would the repair records for those lines still be in existence for the month of December, January, December of 1970, January of 1971?

A Very unlikely.

Q Can you testify of your own knowledge, for a fact that they do not exist or that they do exist?

A To my knowledge, they do not exist. We usually keep repair record orders for six months. Dating back in 1970.

Q Are they not stored somewhere thereafter?

A No, they are destroyed.

Q Destroyed. And would it be your best statement thereafter that these records have all been destroyed as to repairs to the particular terminal box or any of the phones connected therein?

A Such, I would imagine, yes.

Q Is there a way that you can check to be sure?

A If I had particular telephone numbers, I could check. If some what we call line cards are still in existence. In other words, if the service is still working on the same locations, we may have some kind of notification on what we call a line card, which is kept in a plant department strictly for repair and customer facilities purpose.

Q And would you be able to determine, if you could work backwards, in other words, instead of from the line, can you work from the terminal box to ascertain what phones are in that particular terminal box?

A At the present time, we could ascertain as to what telephone is working on that terminal box, at the present time. I do not think we can go back to 1970 and

positively identify which telephone was working on what particular binder or what particular terminal box.

Q Yes. Let me ask this. If someone had put a foreign object into one of your terminal boxes and a repairman went to repair it and he found that there, would he report a foreign object found?

A He would.

Q And does he have any direction from the office as to finding foreign objects in terminal boxes and on wires?

A I believe he has.

Q And is that to remove them?

A I believe so but to notify his supervisor.

Q Both, perhaps? To notify the supervisor --

A Well, -- to my knowledge he has to notify supervisor first and then remove it after, on order.

Q And --

A But this is not exactly my field and I cannot say for sure. Thisis from what I am led to believe. But I do not have the exact directive as to what he should follow.

Q So, therefore, would there be records in existence which would indicate that there were foreign objects for which an order was given to remove it?

A On the repair, on the repair ticket, I do not know. Objectively, I don not know. I never ran into that instance.

Q Does Bell Canada permit foreign objects to be placed in their terminal boxes?

A Definitely not.

Q Does Bell Canada permit police to put foreign objects in their terminal boxes?

A Not to my knowledge.

Q And if Bell Canada found a foreign object whether it be of the police or somebody else's private foreign object, would it be removed equally?

A Definitely.

Q Do you know about the charge rates of Bell Canada? What they charge for their service? In the City of Montreal?

A For what kind of service?

Q Well, let me ask you this. For a -- do you know what a dedicated line might be? Or a private line, that is to say, one that would be open 24 hours for the private use of a particular subscriber?

A Yes.

Q Is that charge the same for that as it would be for plain old telephone service?

A There is no difference. Once you have -- we have two different categories of service. I am talking in the residential service. Of course, we have business services. In the residential service, we have what we call a 1-FR, which is one individual per line.

Q Yes?

A Which is open 24 hours a day for its use. And we have what we call a 2-FR, which is two-party lines. The rates are different, of course. And this is the only difference that we do have in residential service. Either you have a private line or a party line.

Q Now, on a private line, although you can use it 24 hours a day, do you also have such things as lines that are dedicated, say that are used for instance by stock brokers for their stock quotations, open 24 hours a day and just they use it constantly 24 hours? They have it open all the time?

A Are you talking about -- as far as people having access to the same technical facilities within the central office?

Q No. I am asking a person who actually takes the phone off the hook, dials a particular number and keeps it open 24 hours a day. That's their intended use, although they don't tell the telephone company.

A What is the question? Is it possible to do that?

Q No. I know it's possible. Is there a particular rate, for instance, that you charge?

A Of course not.

Q There is not a particular rate?

A This is not included in our tariffs.

Q Let me ask this. Do you have mileage charges? That is to say, if a line is extended from one area and you have an extension maybe across the town? In other words, instead of it being an extension in your apartment, you have an extension that goes for miles?

A Yes.

Q You have charges for that?

A You have charges for that, yes.

Q In addition to the regular service?

A In additional to the regular service.

Q If someone rigs up their own private wire, without paying, would they be in fact theoretically stealing the services of your company?

A No. This is not for me to decide whether they are stealing or not.

(Continued on next page.)

Q Well, if your company knew about it, would you charge them extra for it?

A We'd revoke the service.

MR. IANNUZZI: I have no further questions.

MR. PUCCIO: Nothing further.

THE COURT: Anyone else have any further questions?

MR. KLAR: Nothing.

MR. IANNUZZI: I would ask if the records are available, and I'd ask them not only for that exchange but for the 677 9872 and the 256 7968, and I would like to have those made available.

THE COURT: Would you like to ask the question?

MR. IANNUZZI: Yes.

DIRECT EXAMINATION

BY MR. IANNUZZI: (continued)

Q Would you, sir, be able to check the records through to determine if records of repair to all of the lines that are in a particular terminal box in which also the number 677 9872 was located, if those exist?

A I haven't done that.

Q Would you be able to do that?

A Depending on what time -- what period of time you are talking about?

Q As quick as possible.

A When did the trouble occur?

Q The records existing between September -- No, July of 1970 until March of 1971.

A If those numbers are still in existence -- if they are still in service at the same location, or have the same subscriber that there was at the time, there is a remote possibility. But if the service has been terminated, we do not have any repair records as such.

Q Could you check the other wires that are in the terminal box to decide whether that terminal box had been attended to, whether they were attending to that particular number, or any of the numbers there?

A Like I was saying before, all our repair records are filed by telephone numbers.

Q Yes.

A Now, if for instance a telephone number was working out of this particular terminal box in 1970, and there is no service under that number right now, there is no way we could trace it back. I have no way of knowing what numbers were working in that particular terminal box in 1970, unless they be working at the same location today, which would be impossible.

MR. IANNUZZI: May I have a second, sir?

(Pause.)

Q Would you be able to check the following numbers and determine if you have repair records to the terminal box in which those numbers are located, 256 7978 --

A Like I said, if they are still working today -- if the same service that was in existence, or the same service that was working that date is still working today, we could.

Q If it were working three or four months ago?

A More than likely, yes, unless that number has been reassigned to someone else.

Q I would appreciate it if you could look and see as to 256-7978 and 256-9659?

A May I take notes?

Q Certainly, but I will give this to you.

Would you be able, for the period September of 1971 to April of 19 -- November of 1971 to April of 1971, and also from November of 1970 to April of 1970.

I will give you the dates and the numbers, and I would appreciate it if you could ascertain that information. You could advise Mr. Puccio or Mr. Tobin if you have ascertained that information, whether those records are available -- not as to that particular inquiry, but just that terminal box, and if they are -- if there is a report of foreign objects --

A As I was mentioning before, I do not know what was working in that particular box in 1971, unless all the

same numbers are working there today, which would be impossible.

Q Perhaps you could check the records that are available.

A I would be glad to.

MR. IANNUZZI: No further questions.

MR. PUCCIO: No questions.

THE COURT: You may step down.

MR. KLAR: I have heard the tapes. May I be permitted to leave?

THE COURT: There is no reason to keep the Reporter, is there?

MR. PUCCIO: The tape is in evidence. I see no reason.

MR. PUCCIO: I just wanted to correct something for the record --

MR. ROSENTHAL: I have also heard the tapes, and since Mr. Puccio has not decided to sever Mr. Oddo, I have a lot of work to do.

THE COURT: If you like to leave, fine.

MR. KLAR: If I could ask this:

If all of us have heard them and your Honor is going to hear them at the trial, for what reason are they being played at this time?

THE COURT: I am just going to hear them. I can

listen in chambers.

MR. IANNUZZI: We all have copies of the same thing, and I could supply your Honor with a cassette.

THE COURT: I could listen to this in chambers. I just want to see the quality of it, and whether there are any distortions.

These are in English?

MR. PUCCIO: Five conversations between Mr. Cotroni and Mr. Dasti are in French with a little Italian.

Your Honor wants to hear the first conversation in English --

THE COURT: It won't do me any good to hear it in French.

MR. PUCCIO: We can play a little of the first conversation.

THE COURT: The Reporter may be excused.

* * *

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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

FILED
IN CLERK'S OFFICE
U. S. DISTRICT COURT E.D. N.Y.
JAN 9 1975
TIME A.M.....
P.M.....

UNITED STATES OF AMERICA,

-against-

FRANK COTRONI, FRANK DASTI and PAUL ODDO,

Defendants.

73-CR-898

United States Courthouse
Brooklyn, New York

January 6, 1975
10:30 o'clock A.M.

B e f o r e :

HONORABLE JACOB MISHLER, Chief U.S.D.J.

I hereby certify that the foregoing is a true and accurate transcript from my stenographic notes in this proceeding.

EMANUEL KARP,
OFFICIAL COURT REPORTER

Official Court Reporter
U. S. District Court

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Appearances:

DAVID G. TRAGER, ESQ.
United States Attorney
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BY: THOMAS PUCCIO, ESQ.
Assistant U.S. Attorney

JOHN N. IANNUZZI, ESQ.
Attorney for Defendant Cotroni

MICHAEL KLAR, ESQ.
Attorney for Defendant Dasti

(9:45 o'clock a.m.)

THE CLERK: United States of America against Frank Cotroni, Frank Dasti and Paul Oddo. Hearing continued.

THE COURT: All right.

Are Mr. Gallagher and Mr. Sauve here?

MR. PUCCIO: Yes.

THE COURT: Bring them forward, let us take their testimony.

MR. IANNUZZI: Before we initiate that, may I discuss some matters with your Honor, I have attempted over the weekend to seek further aid and instruction for the Court by way of the law of Canada; I realize of course that we have had a great deal on this already, but I am attempting to obtain a Judge of the Supreme Court of Canada, which is similar to our Supreme Court of the United States --

THE COURT: Yes!

MR. IANNUZZI: And I thought if we had someone of that stature available, it might be of benefit.

THE COURT: You had better get him here by 1:00 o'clock.

MR. IANNUZZI: I don't think I will be able to.

I suggest to the Court if he becomes available your Honor might want to hear him in any event --

THE COURT: I spent over 14 hours over the weekend going over all the papers, I feel that I have a grasp of what there is of the law in Canada.

This case has been going on for months and I am not going to take any last minute opinion. If it is here, I will take it, if it isn't, I won't delay further.

Swear the witness.

Whom do you want to call?

MR. IANNUZZI: May I just suggest to the Court that I have further cases --

THE COURT: Whom do you want to swear in with reference --

MR. IANNUZZI: I think I will have Mr. Sauve first.

THE COURT: Swear him in.

MR. IANNUZZI: I just want to indicate to the Court that I found additional cases that your Honor might want to follow.

THE COURT: Submit them.

MR. IANNUZZI: All right.

I have --

THE COURT: Put them in a brief.

MR. IANNUZZI: May I just mention them for the record?

THE COURT: Go ahead.

MR. IANNUZZI: Luftig versus United States, 338 US 74.

Powell versus Zeckert, 366 F 2d 634.

United STates versus Butler, 156 F 2d 897.

Lowery versus United States, 128 F 2d 72.

Ward versus United States

If your Honor pleases, these cases --

THE COURT: I am not ready to hear argument.

MR. IANNUZZI: If your Honor wants, in any event, if your Honor wants to look at them in addition to the others --

THE COURT: Yes.

MR. IANNUZZI; I just wanted to give you these cases.

THE COURT: Mr. Sauve, please.

P A U L S A U V E , called as a witness on behalf of the defendant Cotroni, having been duly sworn by the Clerk of the Court, testified as follows:

MR. IANNUZZI: May I proceed, sir?

THE COURT: Surely.

DIRECT EXAMINATION

BY MR. IANNUZZI:

Q Mr. Sauve, you are a member of the Royal Canadian Mounted Police; is that correct?

A Yes, your Honor.

Q And what is your present assignment, sir?

A I am in charge of the international heroin group in Montreal.

Q And when you suggest you are in charge of the International Heroin Group in Montreal, is that as a representative of the Canadian Government?

A Yes.

Q You work in conjunction with representatives of other governments?

A Right.

Q And is that on the basis of an agreement between many countries?

A Right.

Q And how many countries are involved in that agreement?

A I wouldn't know how many countries are involved in this, but we are working with the United States and Europe, most of the countries in Europe.

Q Very well.

And as a result of this participation, is there a written agreement or just an agreement amongst the countries?

A I wouldn't know, your Honor.

Q Very well.

Do you have as a result of this working relationship foreign offices in countries other than Canada?

A Yes, sir, we have.

Q And do you have one in the United States?

A No, we don't.

Q Do you have one in Mexico?

A No, we don't, we have one in France.

Q You have one in France?

A Right.

Q And in conjunction with your work, do you also work with the Drug Enforcement Administration of the United States?

A Yes, I do.

Q And do they have an office, does the Drug Enforcement Administration -- if I refer to it as the DEA you will know what I mean?

A Right.

Q Does it have an office in Canada?

A Yes, the BNDB opened an office in 1968 in

Montreal.

Q And after it changed its name, did it still have an office in Montreal?

A Yes.

Q And it continuously has had an office in Montreal, has it not?

A Yes.

Q You cooperate with the United States in reference to investigations of narcotics transactions; is that correct?

A Yes.

Q And in that connection, did you work on the present case with an agent by the name of Gallagher?

A Yes, I did.

Q And did you work with anyone else of the United States?

A I worked with Mr. Gallagher's assistant and another chap from United States Customs stationed in Montreal at that time.

Q Do you know their names, sir?

A Yes, there was an agent Swanson and an agent Fitzpatrick from the United States Customs.

Q And they are all located in Montreal?

A Well, they were at the time, now Mr. Swanson

is in Duluth, Minnesota and Fitzpatrick is at Rous Point, New York.

Q Do you mean Michigan, Rous Point, Michigan?

A No, New York, this is a border point.

Q Okay.

These are the only two members of the United States or the only United STates agents you worked with in conjunction with this case?

A Right.

Q And would it be fair to indicate or to ask whether or not in this respect you gathered evidence, that it was your function to gather evidence; is that not correct?

A Exactly.

Q And in connection with the DEA and other organizations you are gathering evidence for possible prosecution; is that correct?

A That is correct.

Q And that would be possible prosecution not only in Canada but in the United States?

A As well, yes.

Q So that on occasion you functioned in the capacity of gathering evidence for United States prosecution?

A Right.

Q And of course this is totally on the basis

of an official assignment, in other words this function or cooperation with the DEA isn't just a pleasant neighborlines this is official duty, and this is the DEA's official duty?

A It is part of my job to see and to work with the DEA and other federal agencies such as the FBI --

Q Yes.

A Or other American agencies.

Q But in Canada?

A In Canada.

Q But originally this was in the Vegas project?

A Right.

Q Now, when did you become aware of the Vegas project, sir?

A In 1970.

Q You are aware of the fact that originally the Vegas project was related to gambling?

A Right, I was aware.

Q And of course the DEA -- withdrawn.

Your particular office is not involved in gambling investigations, is it?

A No, it is not in our jurisdiction in Quebec.

Q And it is neither in the jurisdiction of the DEA, if you know?

A No, it is not.

Q And originally when the Vegas project was undertaken, you were not, I would assume, involved in it?

A No, I was not.

Q Nor was the DEA?

A Nor was the DEA.

Q And sometime thereafter it was determined that possibly there might be some narcotic transactions involved on those wiretaps, correct?

A Correct.

Q And who determined this, if you know?

In other words, did you determine it as a result of listening to tapes or did someone call you and --

A No, it was inspector Patenaude and his assistants, Claude LaVallee and others, the people working under him called me.

Q They called you, in other words, you didn't discover it by yourself, you didn't occasionally go and just listen to the tapes at police headquarters in Quebec?

A It was the QPs who more or less did that.

(Continued next page)

Q Did you then respond to the Montreal police headquarters to listen to the tapes?

A Correct, Provincial police headquarters.

Q Is that what it would be called, the Quebec Provincial police force?

A Yes.

Q And you responded and listened to the tapes?

A Yes.

Q If you can recall, was any agent of the United States Government with you on the first occasion or were you there by yourself?

A I was with Corporal Bieres.

Q Is he a Canadian?

A Yes, he is a mounted policeman.

Q And you listened to the tapes yourself, did you?

A Yes, I did.

Q And after listening to the tapes, did you immediately, and I ask you if you can recollect, the first time that you heard the tapes, did you determine in fact there was something that might possibly be narcotics, or did you ask them to continue taping and perhaps suggest additional wiretaps for them to undertake?

A No, they did that themselves.

Q They undertook the additional wiretaps themselves?

A Yes.

Q When you listened to the tapes yourself, did you -- of course you didn't hear any specific conversation, talking about narcotics, heroin or cocaine or anything like that, did you?

A Could you repeat that question?

Q Yes, surely.

You didn't specifically hear conversations relating to cocaine and heroin?

A Not at first, no.

Q And did you make a determination in your --

Was it on the basis of your experience that possibly there might be some narcotic transactions being spoken about?

A Yes.

Q And thereafter did you call in the agents from the Drug Enforcement Administration?

A Yes, I did, because this was involving a lot of American people and I was using Mr. Gallagher to check, let us say, license numbers and telephone numbers and so on.

Q In other words, after you listened to the Vegas tapes you realized that the calls were going between

Canada and the United States?

A Some of them, yes.

Q And that there were even American people involved?

A Right.

Q You asked Mr. Gallagher to listen to the tapes for the purpose of continuing the investigation?

A Not all of them, but some of them Mr. Gallagher listened to.

Q And the purpose would be that he would thereafter listen to this towards the end of gathering further information possibly for prosecution in the United States?

A Yes.

Q And possibly for violation of American law as well as Canadian law?

A Narcotic laws, yes.

Q Well, as a matter of fact, you wouldn't have had to call Mr. Gallagher, and when I refer to Gallagher, I mean either he or his assistants, for an investigation of or prosecution under the Canadian law; in other words, that was your function?

A Yes.

Q But you called him in for possible prosecution of or investigation of this evidence for American prosecution;

is that correct?

A Well, you are talking about 1970, aren't you?

Q Yes.

A OK.

At that time this was strictly for intelligence purposes because we didn't know this was going to turn into a prosecution.

Q But at the same time that you listened to it for intelligence purposes, you did undertake to gather this evidence towards the end that it may very well end up with a prosecution --

A Right.

Q Is that correct?

A Yes.

Q Now, is it your testimony that you were gathering this information, that you were using the wiretaps as an investigative tool?

A The QPF was using the wiretaps as an investigative tool.

Q And as a result of the evidence -- well, as a result of the evidence that was being taken over the taps, do you know whether or not there was further investigation which extended down into Mexico and which was by the DEA in Mexico?

A Do you mind repeating that, please?

Q No, not at all.

Do you know whether or not after listening t- the tapes that there was further investigation which extended down into Mexico concerning the subject matter of the Vegas project?

A I wouldn't know.

Q Very well.

Now, do you know when it was that Agent Gallagher responded for the first time and listened to the tapes?

A Well, Gallagher, Mr. Gallagher arrived in Montreal in September of '70, as far as I can remember, and he started in November, October or November of 1970, I took him to the QPF for the first time, it was either in October or November of 1970.

Q When you say that he arrived in Montreal, would it be Montreal that he arrived in?

A Montreal, he started his functions in Montreal.

Q Was that on the basis of your contacting him or was it that he was just assigned there?

A I mentioned before that the BNDD opened their office in 1968 and he replaced Mr. Peneller.

Q Did Mr. Peneller ever listen to the Vegas

project tapes?

A No, he didn't, no.

Q But sometime in October or November you brought Mr. Gallagher over to listen to the Vegas project; is that correct?

A Yes.

Q And in addition to certain tapes -- by the way, do you know if you listened to the original tapes or did you listen to the dubs?

A I think I listened to the originals --

Q And --

A I think, I am not sure, you see.

Q All right.

So you might have listened either to the originals or the dubs?

A Yes, right, right, either one.

Q Did you listen to the tapes of all conversations, if you know?

A Not all of them, no.

Q Did you on some occasions not listen to tapes, but rather read the logs?

A Yes, I read logs and I listened to tapes.

Q And possibly sometimes read transcripts?

A Yes, right.

Q And did Mr. Gallagher read the logs also?

A No, because most of them were in French and Mr. Gallagher didn't speak French in 1970.

Q He did not speak French?

A No. He now does because he is stationed in France.

Q Yes.

And did you on occasion read the logs and indicate to him what they said?

A Yes, I did, in addition to myself, Corporal Bieres did, Corporal Bieres was my assistant at that time.

Q And sometimes Bieres would read them to Swanson or Fitzgerald -- or Fitzpatrick, rather?

A Right.

Q And were they given copies of the logs; do you know?

A The DEA or the BNDD, no, I don't think so.

Q Well, did you give them copies of the logs?

A I never did.

Q Did you ever have copies of the logs?

A Certain logs I did get, I obtained from the QPF, not all of them.

Q The logs you obtained, did you give copies of them to the --

A To the DEA, I don't think I did.

Q To any American agents?

A No, I don't believe so.

Q Did they take notes at the time they were listening or being read to the transcripts or the logs or anything to that effect?

A I am not sure they did, I'm not sure whether they were taking notes, I can assume they did.

Q Do you know if they took notes or wrote things down from the information you gave?

A I say I am not sure.

Q Was Gallagher ever refused copies of the tapes or of the logs or did he have access to them or anything to that effect?

A No, I don't think he ever asked for any logs or tapes.

Q Was he ever given access by way of listening or being given a translation of anything?

A If I may explain, your Honor, Gallagher had no power in Montreal, no jurisdiction whatsoever, he was just coming with me.

Q What I am asking you is if he asked for anything, did he ask --

A He never asked, Gallagher never asked for anything.

Q Did he ever ask you to translate something for him?

A Yes, sir.

Q Did you ever refuse to?

A No, never.

Q All right.

And did he -- he never said anything concerning the scope of the tapes, in other words that perhaps another tape or another machine should be set up to monitor the telephones?

A No, he never did, he never did.

Q Did he ever identify any of the voices that were contained on there?

A He might have, yes.

Q Did he ever give you information that he obtained as a result of what he listened to on the tapes?

A Yes, certain surveillances that were carried out in New York City.

(continued on next page)

Q So as a result of the tapes, there were various surveillances undertaken both actually in Canada and in the United States?

A In Montreal and in New York.

Q And you -- withdrawn.

And Agent Gallagher -- withdrawn again, I'm sorry.

Did you go on the surveillances?

A In Montreal, yes.

Q Did Agent Gallagher go with you on the surveillances?

A Certain surveillances, yes.

Q And did Agent Gallagher go on the surveillances that were held in the United States, do you know, or did someone else do it for him?

A He was stationed in Montreal, someone in New York was doing surveillance.

Q So another member of the DEA would do the surveillance and transmit the evidence or the information back to you or to him and he would give it to you?

A That is correct, that is right.

Q And on some of these surveillances, both in Canada and in the United States, were surveillances of non-Canadians, American citizens?

A Both Americans and Canadians.

Q Yes.

And of course you can effect an arrest of a foreign national committing a crime in Canada, can you not?

A Right.

Q And did you ever effect any arrests in this case concerning the narcotics that were being allegedly talked about over these telephones in the Vegas project?

A In 1970 or '71?

Q Yes.

A No.

Q Did you ever obtain any indictments in Canada concerning any of the conversations that were allegedly narcotic related or of the Vegas project?

A In 1970-71, no.

Q And '72?

A No.

Q '73?

A No, none.

Q None?

A No.

Q Did you ever discuss the narcotic, alleged narcotic transactions with Gallagher -- that is withdrawn.

Did you ever discuss the alleged narcotic

transactions that were going on over these telephones with Gallagher?

A Of course I did, yes.

Q And did you ever discuss the fact that it would be better to prosecute these people in the United States than in Canada?

A In 1970-71 there wasn't enough to even discuss or the possibility of the laying of charges either here or in the States.

Q Is it on the basis of the fact that the tapes did not contain enough information?

A I would say so.

Q Pardon me?

A I would say so.

Q In other words, the tapes were rather vague in the language that was surveilled; is that correct?

A They were vague but we knew exactly what was going on, though.

Q In knowing what was going on, however, you didn't have enough information to make an arrest?

A No, we didn't have enough.

Q And did you know at that time whether or not Gallagher was passing on the names and the phone numbers and the information to his other officers?

A Yes.

Q In the United States?

A Yes, I assumed he was doing that.

Q And so that towards the end did Agent Gallagher -- well, Agent Gallagher was obtaining possible evidence for violation of the American laws and you were aiding him in collecting that evidence?

A Well, we were working in cooperation, the DEA and the RCMP.

Q And wasn't the purpose possibly for prosecution?

A Right.

Q And possibly for American prosecution?

A Exactly.

Q Now, in connection with the investigation, assuming that there was some information that might have been obtainable for prosecution in the United States, did you require Gallagher, did you tell Gallagher, You had better bring your own tape machine and tape these conversations?

A No, I never did.

Q It wouldn't be necessary because of your cooperation?

A QPF had all the equipment they needed.

Q So Gallagher didn't have to obtain any of his

own tape machines, this was being done for him as well as for yourself?

A That was being done by the QPF and they were passing on the information to myself, and I was relaying it to Gallagher and I would also take Gallagher to QPF to listen to certain tapes.

Q And this was a Canadian project, would it be fair to say?

A Yes, Vegas was a QPF project.

Q And they were gathering this information and giving it to the heroin department that you were connected with?

A QPF doesn't enforce the narcotics laws for Montreal, they have to come to the RCMP.

Q They were giving it to you for purposes of narcotic control?

A To further the investigation.

Q And you were also giving it to Gallagher for the same purpose?

A They were giving it to me and I was passing it on to him.

Q You were giving it to Gallagher for the same purpose?

A Yes, I was.

Q That is for control of narcotics both in the United States and Canada?

A Right, right.

Q And as the investigation continued, you continued to listen; did you not?

A Yes, sir.

Q You listened to the tapes?

A Yes, I did.

Q Andyou gathered information and also Gallagher continued to listen?

A Yes, he did.

Q And did you after listening or sharing information file reports that you gave copies to to Gallagher?

A We never give copies of our reports.

Q Did Gallagher give you any copies of his reports?

A Not to me, no.

Q Did he give them to anyone?

A I wouldn't know.

Q When I say anyone, I don't mean --

A He might have given them to Corporal Bieres, but I don't know, sir.

Q Very well.

Did you ever see any copies of Gallagher's

reports?

A No.

MR. IANNUZZI: May I ask, if your Honor pleases, that if there are such reports that were filed by Agent Gallagher and were distributed to the Canadian Government, that the United States Government produce the same for inspection?

THE COURT: I will ask, but let me say this, you can only have 3500 material when the Government produces a witness and this is your witness.

MR. IANNUZZI: May I suggest the fact that I have asked the United States Government --

THE COURT: We will do the best we can, Mr. Iannuzzi, I will take it up with Mr. Puccio --

MR. IANNUZZI: Very well.

THE COURT: (Continuing) -- when you get through with the examination.

MR. IANNUZZI: Fine, sir.

BY MR. IANNUZZI:

Q And there was more than one surveillance in Canada; was there not?

A There was many surveillances in Canada.

Q And all in conjunction with the Vegas project?

A I would say so --

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Sauve-direct

Q And when --

A We are talking about 1970 or '71?

Q Yes.

A Yes.

Q I am not talking about the gambling aspects, I am talking about the possible narcotic aspect of it.

A Right, exactly.

Q And Agent Gallagher participated in these; did he not?

A In some of them, yes.

Q Did the DEA conduct surveillances, if you know, in Mexico in reference to the Vegas project?

A I wouldn't know.

Q Well, did Agent Gallagher ever share information as to surveillances in Mexico connected with the Vegas project?

A No, not with me.

Q Do you know if he shared them with other people in the Canadian Government?

A I would not know.

Q You don't know.

As a result of the conversations on the Vegas project and as a result of the surveillances, were you aware of the existence of a person named Catania?

A Yes, I was.

Q As a matter of fact you had surveilled him in Canada?

A Yes, I did myself.

Q And Gallagher was with you at the time?

A No, I don't think so.

Q Didn't Gallagher go to the Pescatore Restaurant with you?

A Yes, I did, I didn't go inside the restaurant myself.

Q Gallagher went?

A Gallagher went.

Q Didn't you ascertain as a result of that surveillance that Catania was there?

A Yes.

Q So Gallagher saw Catania?

A Yes.

Q And Gallagher was aware of Catania in 1970 and early 1971; is that correct?

A Yes, he was.

(Continued next page)

A 1572

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Q And when you were listening to the tapes, although you say you heard things as a result of your experience that weren't said, it was between the lines, you heard conversations with reference to suits; correct?

A Suits, yes.

Q Suits and rent, fourteen thousand dollars rent?

A Yes.

Q Right?

A Right.

Q You heard all of those things in 1970?

A "70, '71.

Q January, 1971: correct?

A Yes, your Honor.

Q And in conjunction with your work with the heroin -- with the heroin -- was it the heroin department?

A Yes.

Q For the heroin department, you did co-operate with the DEA or the BNDD on other cases; did you not?

A Many cases.

Q Including a case relating to Frank Dasti?

A Yes.

Q Including cases where wiretaps were had in the United States?

A I was not involved with that case.

Q You know the case?

A Yes, I do know the case.

Q And there were wiretaps?

A I wouldn't know, sir, if there were wiretaps, but I am aware of the case.

Q Did you make reports, sir, concerning surveillances in this case?

A Yes, I and Corporal Bieres, we were submitting all the reports.

Q Do you have any of those with you?

A No, I don't.

MR. IANNUZZI: May I ask, if your Honor pleases, whether the Government has any of these reports?

MR. PUCCIO: No, we don't.

MR. IANNUZZI: May I ask that they be made available?

THE COURT: Can you make them available?

MR. PUCCIO: It is not the practice, as I understand it, your Honor, for the RCMP to provide their reports, and I didn't ask for them nor do I expect to get them, I didn't need them.

THE COURT: Ask for them and tell us what the answer is, ask for them.

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MR. PUCCIO: Do you want me to ask for them now?

THE COURT: I beg your pardon?

MR. PUCCIO: May I say it is not their practice to provide them to courts in Canada, but I will ask for them, your Honor.

THE COURT: Tell them it is the practice here and ask if they can make an exception for Mr. Iannuzzi and to bring them here.

MR. IANNUZZI: May I just suggest to the Court that I would like to note for the record that Mr. Patenaude, Deputy Commissioner of the Provincial Police of Montreal, has been here every day with reference to this trial --

THE COURT: We will try to have them here.

MR. IANNUZZI: Pardon me?

THE COURT: We will try to have them here.

Mr. Patenaude is not here today, we will do our best to bring him here.

MR. IANNUZZI: That is not necessary.

I want to suggest that the Canadian Government has felt sufficiently obliged in this case to have Mr. Patenaude here for two weeks, but --

THE COURT: I suggest you complete your

examination of this witness.

MR. IANNUZZI: May I just state --

THE COURT: No, you can do that after five o'clock when I have nothing else to do.

You spend a lot of time in colloquy that has nothing to do with the case.

MR. IANNUZZI: This has very definitely something to do with the case.

THE COURT: When you are finished with this witness --

MR. IANNUZZI: I am almost finished, sir.

THE COURT: Finish, I don't want you to --

MR. IANNUZZI: Can't I make a record of this, your Honor?

THE COURT: You will make the record after you get through with the witness' direct examination.

MR. IANNUZZI: Very well.

I have no further questions.

MR. PUCCIO: No questions.

THE COURT: You may step down.

Thank you.

(The witness was excused.)

THE COURT: Now say everything you want to say.

MR. IANNUZZI: I am only requesting the

production, if the Government of Canada can produce their Deputy Director of their Provincial Police Department every day for two weeks, then I suggest, if your Honor pleases, that they certainly can produce the tapes in this case, at least for your Honor's hearing and for counsel to hear.

THE COURT: That is another one of your non sequiturs, just because Mr. Patenaude was here every day therefore they can produce the reports.

MR. IANNUZZI: That is right, sir -- not the reports, the tapes, so counsel can hear them.

THE COURT: Mr. Puccio, do I understand that defendant's counsel have listened to the original tapes in Montreal?

MR. PUCCIO: There are no original tapes at this point, your Honor, there are master tapes --

THE COURT: There are --

MR. PUCCIO: Master tapes made from the originals.

Mr. Couture testified that the original tapes were destroyed, but we do have copies or masters.

THE COURT: Again Mr. Iannuzzi is asking for something that is not in existence.

MR. IANNUZZI: They are in existence, they have been produced --

MR. PUCCIO: May I say this argument was made before, your Honor, and I think I made it clear --

THE COURT: It sounds familiar.

MR. PUCCIO: I think I made it clear to the Court in my letter to your Honor and to counsel that we have supplied the tapes, copies of the tapes that we are going to offer into evidence with the transcripts, we will have the logs for the latest project here pertinent for the months of December,'70 and January, '71, but we have not supplied the logs and master tapes of irrelevant conversations prior to December, 1970 and after January, 1971, January 31, 1971, however the Canadian government has offered to let your Honor listen to them in camera.

THE COURT: When you say master tapes of irrelevant conversations, are you talking about originals or also copies?

MR. PUCCIO: A master would always be a copy.

THE COURT: I thought you said at one point that there were some tapes of which originals were kept.

MR. PUCCIO: No, there aren't. It is possible I may have said that early in the proceedings, maybe a month or two, but not since the hearing started because we have checked thoroughly.

THE COURT: Am I to go to Montreal to listen to them?

MR. PUCCIO: Your Honor, the tapes, that is the other tapes that Mr. Iannuzzi is asking for and which we offered your Honor the opportunity to listen to, well, we are talking about thousands of conversations taking place between July, '70 and the first of December and after January 31, '71 to the next summer, which do not pertain at all to this case.

THE COURT: I understand the president vetoed an increase in the per diem for traveling, I now get eleven cents a mile. I don't know if I can get to go to Canada, how far is Canada, some three hundred miles?

MR. PUCCIO: We could probably make arrangements, your Honor.

THE COURT: I have heard it said that it may cost sixty dollars to go back and forth to Canada and I would have to spend a few days there and I would have to live in a tent because they wouldn't increase the maximum beyond forty dollars.

MR. PUCCIO: We have the same problem.

If your Honor wishes to listen to the tapes, they are available, but as I pointed out in my letter

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as to these other conversations, the public disclosure of these other conversations would compromise investigations.

THE COURT: I figure it may happen on my way to the North Pole, I will drop by the Canadian Mounted Police office and I will listen to all of those tapes.

MR. IANNUZZI: The Quebec Provincial Police Force.

THE COURT: The Quebec Provincial Police Force, yes.

MR. PUCCIO: I'm sure they will be glad to have you there.

THE COURT: You said there are hundreds?

MR. PUCCIO: Thousands of tapes.

THE COURT: I can't even watch television for half an hour.

MR. PUCCIO: They are in french, your Honor, most of them are in french and you have to have --

THE COURT: In french?

MR. PUCCIO: In french and you will have to have someone assist you.

THE COURT: Will they give me a dictionary?

MR. PUCCIO: They will give you a couple of translators, I understand it will take a couple of

weeks.

THE COURT: Well, both governments have conspired to make it impossible for me to listen to the tapes.

MR. PUCCIO: The only possible way, your Honor, they are voluminous and they have nothing to do with this case, I personally have not heard these tapes, but I am assured --

THE COURT: I will have to give up my vacation which I have been planning for fourteen years now, I'm supposed to take a vacation on February 13th --

MR. PUCCIO: It is cold up in Montreal.

MR. IANNUZZI: If your Honor pleases, may I just ask, I know Mr. Puccio made a statement with reference to it, that it has been indicated that these are non-relevant, and this is based not on his own having listened to them, but rather on information supplied by other persons --

MR. PUCCIO: I have complete confidence in the Quebec police who conducted the investigation and the RCMP, and I take their word --

THE COURT: I heard Mr. Couture speak of the type of conversations that were discarded entirely and those that were recorded under other subject matters.

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I have a short calendar call, gentlemen.

(A fifteen-minute recess then occurred.)

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KEVIN GALLAGHER, called as a witness herein, having been first duly sworn by the Clerk of the Court, was examined and testified as follows:

MR. PUCCIO: During the recess, I spoke to Mr. Sovai and the RCMP will not produce any of their reports.

MR. IANNUZZI: May I note my objection to the Government not producing documents that were requested.

THE COURT: You may try the Canadian courts. They have jurisdiction over the Canadian police.

DIRECT EXAMINATION

BY MR. IANNUZZI:

Q You are an agent of the DEA; is that correct?

A Yes, sir.

Q That, of course, is the successor to the BNDD; is that correct?

A That's correct.

Q And your present assignment, sir?

A Paris, France.

Q Previously, you had been assigned to the Montreal Office; is that correct?

A That's correct, for two years.

Q And how many members of the DEA were assigned

to Montreal at 1970 and 1972? Was that yourself and Mr. Swanson?

A That's correct.

Q And the DEA as a matter of fact, has offices throughout the word; is that correct?

A Yes.

Q All in conjunction with obtaining information concerned with narcotic activity?

A That's correct.

Q And basically toward the end of stemming narcotic activity in the U. S.?

A That's correct.

Q And this is on the basis of a cooperative agreement amongs various nations; is that correct?

A Yes, it is.

Q Do you know how many nations are involved in that?

A No, I do not.

Q Now, in connection with your official duties in Montreal, you were in touch with Mr. Sovai?

A That's correct.

Q And as a matter of fact you are in constant touch with him; is that correct?

A Yes, sir.

Q Was Mr. Swanson also in contact with him?

A Yes, sir, he was.

Q Were you also in contact with other members of the Royal Canadian Mounted Police or other Canadian officials?

A Yes.

Q With whom else other than Mr. Sovai?

A I knew just about all the detachment in Montreal. I also knew members of the QPF, Canadian Customs and that type of thing.

Q Mr.Sovai's function would be similar to yours but on behalf of the Canadian Government; is that correct?

A That's correct.

Q Basically that's toward the end of not only investigating narcotic transactions in Canada but in cooperating with yourself toward the end of obtaining evidence for activities in America?

A That's correct.

Q And basically it would be the sharing of information?

A Yes, sir.

Q That might lead to prosecution in the U. S.?

A That's correct.

Q And your participation in the investigation,

the Vegas project was on behalf of the U. S.; is that correct?

A That's correct.

Q In 1970, you became aware of the Vegas project did you not?

A Yes, I think in October.

Q Now, your interest -- withdrawn. You are aware of the fact, I assume, that the Vegas project originally initiated concerning matters other than drugs?

A Yes, sir.

Q Did there come a time when you were advised that possibly the Vegas project and the wire tappings were giving information concerning narcotic activities in the U. S.?

A Yes, sir.

Q And the investigation had something to do with a person named Frank Dasti?

A That's correct.

Q You were aware of Mr. Dasti, were you not?

A Yes.

Q You were aware of Mr. Dasti being allegedly a suspect in the drug related activities prior to the Vegas proejct?

A Yes, sir, I was.

Q Were you aware of the fact that the BNDD's investigation concerned a prosecution which was undertaken in New Jersey?

A Yes, sir.

Q And in connection with that case there were wiretaps conducted by the BNDD? Is that correct?

A I believe there were, yes.

Q Those were undertaken in the U. S., was that not so?

A I believe so, yes.

Q They were calls between the United States -- those wiretaps conducted by BNDD in the U. S. related in part to conversations between persons in the U. S. and persons in Montreal?

A Yes, sir, I believe they did.

Q I would ask whether or not these wiretaps undertaken by the BNDD in the U. S. were shared with the Candaidan authorities, the information contained therein?

A Yes, sir, I believe itwas.

Q The wiretaps of the Vegas Project, how often did you listen to them,personally?

A I used to go to the QPF during that period two or three times a week, sometimes more, depending on how often Dr. Sovai would get in touch with me.

Q Would it be fair to say at least three times a week, sometimes more, sometimes less?

A That's correct.

Q After listening to these conversations -- withdrawn.

Do you know whether or not you listened to the original tapes?

A That, I don't know.

Q In any event, you listened to conversations--

A Yes.

Q --that were tape recorded?

A That's correct.

Q After listening to these -- withdrawn.

Did you in addition to listening to conversations also read logs or have logs translated for you relative to conversations that you did not listen to?

A Yes, sir.

Q After listening to these tapes and obtaining this information by way of translation did you discuss this information with officials of the Canadian Government?

A Yes, sir.

Q At that time, did you make any suggestions as to the further investigation of the said narcotic activity?

A No, sir, not that I can recall.

Q What I mean by that is, not limited to suggesting to them what further taps perhaps might be made but also what information you might be able to gather in the U. S. as to the identity of the persons involved?

A Oh, yes, that I did do.

Q In other words you discussed with them the evidence and possibly the method of obtaining additional evidence concerning the subject matter of the tapes?

A Just surveillance and that type of thing, yes.

Q And the purpose of the surveillance and suggestions was to obtain additional possible evidence?

A That's correct.

Q After discussing andlistening to these tapes and reading or having translated for you various logs and after discussing it with the Canadian officials did you discuss it with American officials?

A Yes, sir.

Q Did you receive suggestions as to the gathering of further information from the American officials?

A No, sir, not that I can recall. I was in charge of the office. That was my business.

Q After you made suggestions to them as to where or how they might obtain further information did you get reports from them?

A Yes.

Q By "them," I mean the Americans.

A Yes, sir.

Q After listening to the tapes and hearing the logs did you file any reports with the DEA --

A Yes.

Q -- concerning the same?

A Yes, I did.

Q Would you produce those, please?

A I assume Mr. Puccio has them. I don't have personal copies of them.

MR. PUCCIO: I have copies of reports Mr. Gallagher filed. I indicated during the hearing on the motion for discovery that we would not provide internal Government documents that were prepared in connection with the investigation of this matter unless required to under Section 3500.

I don't believe the present circumstances require their production under Section 3500.

THE COURT: I agree.

If Mr. Gallagher testifies at the trial, he will be required to produce, you will be required to produce any records containing any statements made by Mr. Gallagher with regard to his trial

testimony.

I have directed the production of statements of witnesses produced by the Government at the hearings. I haven't distinguished between trial and hearing. However, I will not, over objection of the Government, direct the production where the witness is produced by the defendant.

MR. PUCCIO: I might add that I have read Mr. Gallagher's reports concerning this investigation and they contain,generally speaking, a record of surveillances made by Mr. Gallagher and RCMP members in connection with this investigation.

They also contain summaries of information which I believe were received through the Quebec Police Force with respect to the wiretaps.

The wiretap information, the primary information has already been handed over. I suggest their is really nothing new.

MR. IANNUZZI: May I suggest the purpose of the request is to ascertain the participation of the U. S. Government in the obtaining of the wiretaps toward the end of legality or illegality pursuant to Title 3.

(continued next page.)

DIRECT EXAMINATION

BY MR. IANNUZZI (Cont'd):

THE COURT: Ask Mr. Gallagher.

The reports only go to credibility.

MR. IANNUZZI: I would like to have them for the purpose of ascertaining --

THE COURT: You made that clear to me but you are not getting them.

Q In connection with the various reports you made, was there a distribution made to the D.E.A. in the United States?

A Yes, sir.

Q Was there a distribution made to the D.E.A. in Mexico?

A Yes, sir, when warranted.

Q Some of the conversations relative to the Vega projects and informationyou were obtaining in Montreal was related to Mexico, was it not?

A I believe it was, yes, sir.

Q And some of the information was related to conversations made to the United States from Canada?

A Excuse me?

Q Someof the calls about which you were getting information were call between the United States and Canada?

A Yes, sir.

Q Both made in the United States to Canada and made in Canada to the United States. Is that correct?

A Yes, sir.

Q You were not involved in an investigation of gambling?

A No, sir.

Q So that you were called into the case or at least were involved in the Vega project towards the end of narcotic activity?

A That's correct.

Q You were called because some of the narcotics activity might have been conducted in the United States?

A That's correct.

Q And related to the United States?

A Yes, sir.

Q And after listening, did you follow up the listening by attempts on your part or by the D.E.A. in the United States on your behalf to identify persons who were making the phone calls?

A Yes, sir.

Q Did you ever get any transcripts from the Canadian Government of conversations you did not listen to?

A No, sir, I did not.

In fact, I never got any transcript from them.

Q Did you ever ask for any?

A No, sir.

Q Did you ever take any notes concerning the information being imparted to you by the Canadian officials?

A Yes, sir.

Q Althougn you didn't receive copies, specific copies of the transcripts, you did take your own notes concerning the information that was either contained on the transcript or in the conversations?

A Yes, I did.

Q I understand you did not at the time speak or read French; is that correct?

A That's correct.

Q However, these logs were read to you on occasion or translated for you?

A Yes.

Q You were aware of the information contained thereon?

A I was.

Q Subsequent to your listening or hearing certain evidence you conducted various surveillances in cooperation with the Canadian Government; is that correct?

A That's correct.

Q And the surveillances had to do not only with Canadians but with Americans?

A That's correct.

Q The entire purpose of the surveillances was toward the end of obtaining possibly information that might lead to prosecution in the United States?

A That's correct.

Q After the surveillances were conducted, did you file reports?

A Yes, sir.

MR. IANNUZZI: May I have copies of those, your Honor?

THE COURT: I don't have them.

MR. PUCCIO: Which reports?

THE COURT: I don't have them.

MR. IANNUZZI: I understand that.

Would you direct the Government to make those vailable to defense counsel?

THE COURT: Do you know the reports he's talking about?

MR. IANNUZZI: Filed reports subsequent to the surveillances in Canada in cooperation with the Canadian Government.

MR. PUCCIO: When the agents testify concerning

these surveillances, we will make the reports available.

THE COURT: You refuse to do it before that time?

MR. PUCCIO: That's correct.

THE COURT: They are not produced and I sustain the Government's position.

The rules say you have an exception to every ruling that the Court makes.

BY MR. IANNUZZI:

Q After filing these reports, did you continue sharing information with the Canadian Government?

A Yes.

Q If you filed the report concerning obtaining additional information from the United States, when you obtained that information, you would share that information with the Canadians?

A Yes, sir.

Q In addition, there were reports -- withdrawn.

There were surveillances conducted in the United States as a result of the information you gave?

A Yes.

Q Were reports filed concerning that?

A Yes.

MR. IANNUZZI: I'd ask for those, your Honor.

MR. PUCCIO: Same position.

THE COURT: Same ruling.

The rules say you have an exception.

MR. IANNUZZI: Thank you, sir.

BY MR. IANNUZZI:

Q Did you thereafter continue listening to the tapes?

A Yes, sir.

Q How often, the same frequency, approximately three times a week, sometimes more?

A Yes.

Q I assume you filed more reports?

A Yes, sir.

Q That would be concerning the information that was being obtained in the investigation that was proceeding?

A That's correct.

Q And the basis or one of the purposes of your filing these reports was to keep the D.E.A. in the United States advised as to the progress of the investigation?

A Yes, sir.

Q And the possible further gathering of evidence for prosecution in the United States?

A That's correct.

Q These conversations were not direct conversations concerning narcotics, the conversations weren't about five kilos or 10 kilos of heroin, they were valid conversations?

A Yes, sir.

Q Was it your opinion after listening to these conversations that they sounded like drug related matters?

A Yes, sir.

Q And possibly an impending sale of narcotics in the United States?

A That's correct.

Q You were using your infor to further your investigation toward the end of apprehending the persons who might be participating in this conspiracy in the United States?

A Yes.

Q You were not only interested in people in the United States but apprehending the conspiracy?

A That's correct.

Q In connection there were -- there were further surveillances?

A Yes, sir.

Q Both in Canada and United States?

A Yes, sir.

Q And also surveillances in Mexico?

A Yes, sir, I believe there were.

Q I would imagine you could describe this as an official investigation of the Drug Enforcement Administration?

A Yes, sir.

Q Both in the United States, Mexico and Canada?

A That's correct.

Q And the information you obtained was distributed in all those sectors?

A Yes, sir.

Q And in other sectors that might be related in the United States and elsewhere?

A Yes, sir.

Q Including France?

A Yes, sir.

Q As a result of your surveillances and information you obtained, you were aware of the existence of a person named C-a-t-a-n-i-a?

A Yes.

Q As a matter of fact, you had surveilled Mr. Catania in Montreal in conjunction with the Canadaian officials?

A Yes, I had.

Q You knew as a result of the information obtained there was conversations on the tapes about things other than

outright mention of narcotics such as they would mention suits, sale of suits or transportation of suits?

A That's correct.

Q And rent -- $14,000 relative to rent, etc.; things to that effect?

A Types of conversations like that. I don't remember the exact conversation.

Q You were aware of this in '70 and '71, were you not?

A That's correct.

Q This was all done by yourself in connection with your official duties?

A That's right.

Q This was not merely a pleasant unofficial relationship that you had with the Canadian Government?

A No, sir.

Q Although you might have had pleasant unofficial relationship, but your investigation was official and on the basis of a cooperative agreement between the two countries?

A Right.

Q As a result of that -- the information with reference to the wiretapping, they didn't require you to bring your own machines and own agents to do the wiretapping?

A No.

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Q They undertook to do the taping and you were permitted to gather the information therefrom?

A Yes.

Q You relied upon the Canadian Government to do this for you?

A They were doing it for themselves and allowing me the benefit of it.

(Continued on next page.)

DIRECT EXAMINATION

BY MR. IANNUZZI: (Cont'd.)

Q They were also permitted to rely upon the Americans in reference to evidence gathered elsewhere which might be a benefit to Canadian prosecution?

A Yes, sir.

Q Did you ever confer with your superiors -- withdrawn. Were you the head of the DEA office in Montreal?

A Yes, sir.

Q Did you ever confer with your superiors in the United States or elsewhere concerning the monitoring of the conversations in Canada?

A I don't follow what you mean. I discussed the information I was receiving.

Q Did you ever discuss with them the fact the taps were being made in Canada -- withdrawn. Were you aware in '70 and '71 of Title 3?

A Yes.

Q What I mean by that is the wiretapping agent in the United States?

A Yes.

Q You were aware of the requirements of Title 3 concerning wiretapping?

A Yes.

Q Had you received instructions during your training concerning the conduct of electronic surveillance?

A Yes.

Q Were you also issued a manual for the conduct of Electronic 3, Agents' Manual for the Conduct of Electronic Surveillance Public 3 Public Law 90-351?

A I believe there was an insert in the agents' manual relative to it, yes.

Q That insert was specifically geared to advise the agents as to conduct electronic surveillance?

A That's correct.

Q You were aware of the stringent requirements of Title 3, forgetting stringent, the requirements of Title 3 as to the supervising agent and supervising lawyer and supervising Judge?

A Yes, I was.

Q Did you ever consult any of your superiors concerning the effect or the requirements of Title 3 in relation to wiretaps for electronic surveillance undertaken in a foreign jurisdiction?

A I don't believe so.

Q Did you ever inquire whether or not you had to comply with Title 3?

A In a foreign country? No, sir, I don't

Q Did you ever consult your superiors or any of the United States Attorneys concerning the requirements of Title 3 relative to American citizens?

A No, sir, I don't recall I did.

Q In foreign countries, of course. I am not talking about the United States.

A I understand. No, sir, I don't believe that I did.

Q Did you ever receive any instructions or manual concerning the electronic surveillance conducted outside the United States?

A No, sir, I did not.

Q Did you ever ascertain whether or not a warrant should be obtained for the electronic surveillance conducted in Canada as far as obtaining evidence to be used in the United States?

A No, sir, I never did.

Q Were you ever advised by your superiors or any United States Attorney that the geographic boundary dispensed with Title 3?

A No, sir.

Q Were you ever advised that the geographic boundary eliminated Title 3 so far as it related to calls over the United States network of telecommunications?

A No, sir.

Q Did you ever inquire of the effect of Title 3 on telephone calls monitored over the electronic network in a foreign jurisdiction, the telecommunication network?

A No, sir.

Q You neither got advice or sought it concerning the propriety of the wiretap?

A That's correct. To the best of my knowledge I don't remember.

Q That would be not only from your superiors but you never sought or got advice from the United States Attorney as to the propriety?

A No, sir.

Q Your gathering of information was for the purpose of prosecution in the United States?

A No question whatsoever.

Q You were not gathering information for a foreign government?

A I guess that would have depended how the case developed. If the case was in Canada that's where it would have been.

Q Your aim was not to obtain evidence for a foreign jurisdiction but obtaining evidence for the American authority?

A Basically, yes.

Q Did you ever ask your office to consult with the United States Attorney concerning any requirements for a warrant or for Title 3 strictures relative to your activity in Canada?

A No, sir.

Q Did you ever make any affidavits to obtain a warrant for the surveillance in Canada?

A No, sir, never.

Q Had you ever obtained warrants in other cases -- withdrawn. Have you ever obtained affidavits concerning wiretapping other than in Canada, in the United States?

A Myself, personally?

Q Yes, sir.

A No, sir.

Q Were you ever involved in cases in the United where there was electronic surveillance under Title 3?

A No, sir, not that I can recall.

Q Did you ever obtain warrants in American cases concerning persons not nationals of the United States?

A No, sir.

Q Were you aware of the fact whether or not in the case with Mr. Dasti in another jurisdiction, whether or

not you are aware there was a warrant obtained for electronic surveillance?

A In the United States?

Q Yes, sir.

A I believe I was aware there was one. I am not sure.

Q We're speaking of conversations over the same telecommunication network?

A Yes, sir.

THE COURT: Mr. Iannuzzi means wiretapping and interception of wire communications when he used the phrase "electronic surveillance". You understand that?

THE WITNESS: Yes, sir.

Q In connection with this gathering of information, this was an ongoing investigation, was it not?

A Yes, sir.

Q It was going on for months?

A Yes, sir.

Q And there wasn't an emergency situation which precluded you from seeking the advice or possibly seeking a warrant in this case?

A No, sir.

Q Did you know whether or not you were able to

obtain a warrant for electronic surveillance as an -- as the Court indicated this is in reference to wiretapping but using the official United States Government reference of electronic surveillance, were you aware of whether or not you could --

MR. PUCCIO: I think the official United States Government reference, if Mr. Iannuzzi is referring to the statute of electronic surveillance covers both wiretapping and other forms of surveillances, such as bugging.

(Continued on next page.)

Q Were you aware whether or not you could obtain a warrant under the circumstances involved in your case, The Vegas Project?

A Obtain a warrant in Canada?

Q Obtain a warrant in the United States, which would authorize you under court supervision to do exactly what was being done?

A I was aware that I could apply for one. Is that what you mean?

Q I am asking you whether you knew that you could apply for one?

A Yes.

THE COURT: You knew that you could apply for a warrant to tap outside the United States?

THE WITNESS: No, I am sorry. I thought he meant in the United States.

Q Let me rephrase the question so there will be no misunderstanding.

Were you aware at the time whether or not there was a warrant that could be obtained for the purpose of having United States court authorization to intercept telecommunications that would be used for prosecution in the United States?

A A warrant obtained in the United States?

Q Yes.

A Yes, that I could apply for one.

THE COURT: May I have that question once more?

(Question read.)

THE COURT: Go ahead.

Anything else?

MR. IANNUZZI: Yes.

BY MR. IANNUZZI:

Q Were you aware whether or not there was a warrant that could be obtained for the electronic surveillance of telecommunications under the circumstances in this particular case, that is to say, a warrant issued by an American court which would authorize your electronic surveillance or the monitoring of conversations in a foreign jurisdiction?

MR. PUCCIO: Your Honor, I am going to object to the form of that question. I do not think it is quite clear. It assumes that there is a warrant.

THE COURT: Do you understand that you could apply to an American court to tap wires outside the United States?

THE WITNESS: No, I never knew that.

THE COURT: That is new to me too. That is what Mr. Iannuzzi is asking --

MR. IANNUZZI: That's not exactly what I was asking.

Q Were you aware whether or not there was such a warrant that could be obtained to permit your monitoring conversations for use as evidence in American prosecution?

MR. PUCCIO: I will object to that.

THE COURT: Objection sustained.

Q Did you ever ask whether or not such a warrant should be applied for?

MR. PUCCIO: I objected to it the first time.

THE COURT: Objection sustained.

Q Did you ever ask your superiors or a United States Attorney whether or not you should obtain a warrant for monitoring --

THE COURT: To tap wires where?

MR. IANNUZZI: I did not say "tap".

THE COURT: Objection sustained. It is irrelevant.

MR. IANNUZZI: It is monitoring --

THE COURT: Objection sustained.

BY MR. IANNUZZI:

Q In any event, you continued to listen to those conversations and passed this information back to the United States?

A Yes, I did.

Q You felt it was part of your official function to do so?

A Yes, I did.

Q Regardless of whose machines were being used or who was sitting at the monitoring console, this information that you were gathering was one of your methods of obtaining information concerning American narcotics activities?

A Accepting the information Canadian, yes, it was.

Q I don't know what you said in the beginning, excepting or accepting?

A Accepting.

Q Is it your testimony that no one advised you that Title Three was not applicable to American citizens talking to foreign nationals?

A That is right.

Q No one advised you that Title Three does not apply to foreign nationals?

A No, sir, nobody advised me.

MR. IANNUZZI: I have no further questions.

THE COURT: Any questions?

MR. KLAR: I have several.

THE COURT: Make it brief, Mr. Klar. I do

not want repetitious examination.

CROSS-EXAMINATION

BY MR. KLAR:

Q Mr. Gallagher, did you have any conversations with anyone in your Mexican office relative to Mr. Catania and his difficulties in Mexico, which ultimately forced his removal or exit from Mexico to the United States?

A No, sir.

THE COURT: This is a motion to suppress why it happened?

MR. KLAR: Correct.

THE COURT: This is not a general pre-trial examination.

MR. KLAR: It relates to American participation --

THE COURT: Objection sustained.

BY MR. KLAR:

Q Mr. Gallagher, you knew, did you not, that American citizens were involved in these wiretaps?

A Yes.

Q You knew, did you not, that the telephone calls that were being monitored between the United States and Canada involved calls coming from the United States into Canada?

A Yes.

Q You knew this procedure that Mr. Iannuzzi referred to was available to you, in order to obtain a warrant, that would authorize -- withdrawn.

You knew, did you not, that you could obtain a warrant in the United States for the purposes of monitoring the calls from New York into Canada, did you not?

A Yes, sir.

MR. PUCCIO: I object to the word "monitoring".

Q Intercepting calls from the United States into Canada?

A I was aware that I could apply for such a warrant.

Q You did not?

A I did not.

Q Did you discuss with any of your superiors the question of whether you should apply for a warrant in the United States to intercept calls originating in the United States and going outside the country?

A Not that I can recall, no, sir.

MR. KLAR: I have no further questions.

THE COURT: Anything further?

MR. PUCCIO: I have one or two questions.

THE COURT: All right.

CROSS-EXAMINATION

BY MR. PUCCIO:

Q When did you first begin working in Montreal?

A September 7th of 1970.

Q That was your first day in the Montreal office of BNDD?

A That is correct.

MR. PUCCIO: No further questions.

MR. IANNUZZI: May I have just one?

REDIRECT EXAMINATION

BY MR. IANNUZZI:

Q After you passed the information back to DEA in Mexico, Marseille and the United States, the DEA indicated that they wanted you to continue your investigation to obtain further information towards the prosecution of American narcotics conspiracies?

A Correct.

Q You continued to gather information for surveillance based on behalf that this was for the United States Government, the DEA and the United States?

A Yes.

MR. IANNUZZI: I have no further questions.

THE COURT: Any further witnesses?

MR. IANNUZZI: No.

MR. KLAR: No.

THE COURT: Both sides rest?

MR. PUCCIO: Yes, your Honor.

THE COURT: How many tapes concerning conversations between parties in New York and Canada have you?

MR. PUCCIO: Your Honor, if I may, I think I could summarize for you very quickly all the conversations that the Government intends to offer into evidence. We have gone over them. Of the twenty-two taped conversations provided us, we intend to offer seventeen.

The first conversation is of a call made by Paul Oddo in New York to Frank Dasti at the Victoria Sporting Club in Montreal. That conversation took place between 4:00 p.m., December 30th and 4:00 p.m. December 31, 1970.

Second, a telephone call placed by Paul Oddo in New York to Dasti at the Victoria Sporting Club on December 31, 1971 between 4:00 p.m. and 8:00 p.m.

Number three would be a telephone conversation Frank Dasti places at home in Montreal to Oddo in New York on January 1st, 1971 between 8:00 a.m. and 4:00 p.m.

Number four would be a telephone conversation

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of Frank Dasti at home in Montreal calling Frank Cotroni at his home in Montreal. That call is placed on January 1st between 8:00 a.m. and 4:00 p.m.

Number five is a conversation of a call placed by Paul Oddo and Anthony Vanacor in New York to Dasti in Montreal at the Victoria Sporting Club on January 2nd between 10:00 a.m. and 4:00 p.m.

Number six is a call placed by Oddo and Vanacor from New York to Dasti at the Victoria Sporting Club in Montreal on January 4th, 10:00 a.m. to 8:00 p.m.

Number seven is a call placed by Oddo and Vanacor in New York to Dasti at the Victoria Sporting Club in Montreal, January 5th between 10:00 a.m. and 5:30 p.m.

Number eight is a call placed by Oddo and Vanacor in New York to Dasti at the Victoria Sporting Club in Montreal on January 5th between 8:00 a.m. and Midnight.

Number nine is a call placed by Dasti from the Tuscatore Restaurant in Montreal to his wife, who is at his residence in Montreal, on January 8th between 8:00 p.m. and Midnight.

Number ten is a call Dasti places in New York to Frank Cotroni at home in Montreal on January 12th

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between 8:00 a.m. and 8:00 p.m.

I might point out, your Honor, there is no indication from the call itself that Mr. Dasti is in New York. However, hotel records which we plan to introduce show that he was registered at the Drake between the 9th and the 13th, so we can infer from that and from the context that the call was placed in New York. The same is so with respect to the calls that we say are from New York, from Oddo and Vanacor. They are using public telephones. We assume from all the circumstances that the calls were placed in New York, since it is an incoming call and the wiretap was in Montreal. There is no way of determining where the call was placed from, only whether it was long distance.

The eleventh conversation is a call from Dasti from the Victoria Sporting Club to his wife at home in Montreal. It is on January 13th between 10:00 a.m. and 8:00 p.m.

Number twelve is a call made by Frank Cotroni in Mexico to Dasti at the Victoria Sporting Club on January 15th, between 10:00 a.m. and 8:00 p.m.

Number thirteen is a call by Paul Oddo in New York to Frank Dasti at the Victoria Sporting Club in Montreal on January 15th between 10:00 a.m. and

7:30 p.m.

Number fourteen is a call made by Paul Oddo in New York to Dasti at the Laurentian Hotel in Montreal on January 16th at exactly 10:00 a.m.

Number fifteen is a call made by Paul Oddo in New York to Frank Dasti at the Victoria Sporting Club on January 16th, between 10:00 a.m. and 8:00 p.m.

Number sixteen is a call made by Frank Dasti at the Victoria Sporting Club to Frank Cotroni in Mexico on January 16th between 10:00 a.m. and 8:00 pm.

Call seventeen is a call by Mr. Dasti at the Victoria Sporting Coub to Frank Cotroni in Mexico on January 20th, between 10:00 a.m. and 8:00 p.m.

Of the twenty-two conversations that we have received, these seventeen we ask be admitted into evidence.

I also state at this point that the Government, in light of the circumstances surrounding Mr. Oddo and his health and the fact that the doctors have indicated that he would not be able to stand trial, will at this point consent to a severance of Mr. Oddo.

THE COURT: First, on the motion to suppress:

I find that under Canadian law it was not unlawful to wiretap.

I find that under the available Canadian law,

wiretaps obtained prior to June 30th, 1974 would be admissible after June 30th, 1974.

I might say not only under Canadian wiretap law, but our own wiretap law talks about lawful wiretaps and there is no reason to bar evidence obtained prior to June 30th, 1974. The only real problem I find is with conversations that used a portion of our wire communication system and I have made a careful review of the legislative history and of Title Three and I conclude that the purpose of our wiretap law, 18, U.S. Code, Section 2510, etc., and the Federal Communications Act, Section 47, U.S. Code, Section 605, is to protect our intra-State and that included our intra-State wire communication system by prescribing wiretapping within the United States, its territories, possessions and the District of Columbia, and in no way intended to prohibit wiretapping outside the United States that engaged a portion of our wire communication system.

The motion to suppress the wiretaps is in all respects denied.

I hope to file a written opinion on the matter by next Monday, the 13th. I do not know if I will make it or not.

I can make a specific finding now that I will

include in my decision that the wiretapping was initiated by the Scientific Research Service headed by Deputy Director General Herve Patenaude long before any information was given by the Canadian police to our Drug Enforcement Administration agent in Canada. It was continued solely under the supervision and direction of Mr. Patenaude.

The information was gathered and under our recent joint effort in the control of international narcotics traffic, information was exchanged. I think it would be an unrealistic, needless bar to place the boundaries between countries as an obstacle to the investigation of narcotics dealings on an international scale. I do not think that the wiretapping act, which incidentally is both a penal statute and a statute authorizing wiretapping, was ever intended to control or interfere with any wiretapping performed in a foreign country and as I have indicated, we certainly would have no right to authorize anyone to wiretap in a foreign country. It is unthinkable.

I will say more about the history of our wiretap law in my opinion.

Just as a footnote, I will call your attention to the definition of "persons." The wiretap law says, "any person." I do not have the section before me,

but it defines any person as an individual, corporation, public or other entity, within the United States.

We will start picking a jury at one o'clock in this case.

MR. IANNUZZI: May I just indicate that the defendant does not only rely upon the wiretap statute, but also the Fourth Amendment with respect to search and seizure.

THE COURT: Mr. Iannuzzi, you have never accepted a determination of mine. You have argued all throughout this week that we have had the hearing. I have listened to all your arguments. If you want the answer to that, I will give it to you.

MR. IANNUZZI: I do not want it.

THE COURT: The Fourth Amendment against search and seizure is extra-territorial, it does not apply to activities beyond our borders.

Two, I have read the Canadian Bill of Rights. It does not have an equivalent constitutional right against unreasonable search and seizure.

Argue the rest in your brief before the Court of Appeals. Do not waste my time here.

MR. IANNUZZI: May I just say it is not only the wiretapping that we object to, but the oral acquisition that our statute speaks of.

THE COURT: One o'clock to pick a jury, gentlemen.

MR. IANNUZZI: Thank you very much.

THE COURT: Now, on the motion to sever as to the Defendant Oddo, the motion is granted.

(End of A.M. Session)